

**CITY OF NEWARK  
DELAWARE  
COUNCIL MEETING MINUTES**

**December 10, 2018**

Those present at 5:00 p.m.:

Presiding:	Mayor Polly Sierer District 1, Mark Morehead District 2, Jerry Clifton District 3, Jen Wallace District 4, Chris Hamilton District 5, Jason Lawhorn District 6, Stu Markham
Staff Members:	Acting City Manager Tom Coleman City Secretary Renee Bensley City Solicitor Paul Bilodeau Acting HR and Labor Relations Manager Mark Farrall Assistant to the Manager Mark Brainard Communications Manager Kelly Bachman Community Affairs Officer Megan McGuriman Finance Director David Del Grande Acting IT Infrastructure Manager Daina Montgomery NPD Sergeant Greg D'Elia Parks and Recreation Director Joe Spadafino Planning and Development Director Mary Ellen Gray Acting Public Works and Water Resources Director Tim Filasky Records Management Coordinator Samantha Corson

---

1. Ms. Sierer called the meeting to order at 5:00 p.m.

2. **EXECUTIVE SESSION**

- A. Executive Session pursuant to 29 *Del. C.* §10004 (b) (9) for the purposes of discussing personnel matters in which the names, competency and abilities of individual employees are discussed.
- B. Executive Session pursuant to 29 *Del. C.* §10004 (b) (4) and (9) for the purposes of a strategy session, including those involving legal advice or opinion from an attorney-at-law, with respect to potential litigation when an open meeting would have an adverse effect on the litigation position of the public body and discussing personnel matters in which the names, competency and abilities of individual employees are discussed.

MOTION BY MR. CLIFTON, SECONDED BY MR. MOREHEAD: TO ENTER EXECUTIVE SESSION FOR THE PURPOSE OF DISCUSSING PERSONNEL MATTERS IN WHICH THE NAMES, COMPETENCY AND ABILITIES OF INDIVIDUAL EMPLOYEES ARE DISCUSSED, PURSUANT TO TITLE 29, SECTION 10004 (B) (9); FOR THE PURPOSE OF A STRATEGY SESSION, INCLUDING THOSE INVOLVING LEGAL ADVICE OR OPINION FROM AN ATTORNEY-AT-LAW, WITH RESPECT TO POTENTIAL LITIGATION, WHEN AN OPEN MEETING WOULD HAVE AN ADVERSE EFFECT ON THE LITIGATION POSITION OF THE PUBLIC BODY AND DISCUSSING PERSONNEL MATTERS IN WHICH THE NAMES, COMPETENCY AND ABILITIES OF INDIVIDUAL EMPLOYEES ARE DISCUSSED, PURSUANT TO TITLE 29, SECTION 10004 (B) (4) AND (9); ADDING ITEM ES-C TO THE END OF THE MEETING FOR THE PURPOSES OF DISCUSSION OF THE CONTENT OF DOCUMENTS, EXCLUDED FROM THE DEFINITION OF "PUBLIC RECORD" IN §10002 OF THIS TITLE WHERE DISCUSSION MAY DISCLOSE THE CONTENTS OF SUCH DOCUMENTS, PURSUANT TO TITLE 29, SECTION 10004 (B) (6) AND (9).

MOTION PASSED. VOTE: 7 to 0.

Aye – Clifton, Lawhorn, Hamilton, Markham, Morehead, Sierer, Wallace.  
Nay – 0.

3. **RETURN TO PUBLIC SESSION**

- A. Potential vote regarding expenses related to an on-the-job injury

**1:56**

Council exited Executive Session at 7:00 p.m. Ms. Sierer welcomed the audience and informed those in attendance that Council discussed items A and B in Executive Session and had added item C for the end of the meeting.

MOTION BY MR. MOREHEAD, SECONDED BY MS. WALLACE: TO ENTER INTO THE SETTLEMENT AGREEMENT TO PAY MEDICAL BILLS FOR THE INJURED EMPLOYEE AS DISCUSSED IN EXECUTIVE SESSION.

MOTION PASSED. VOTE: 7 to 0.

Aye – Clifton, Lawhorn, Hamilton, Markham, Morehead, Sierer, Wallace.  
Nay – 0.

4. Ms. Sierer asked for a moment of silence and the Pledge of Allegiance.

5. 1. **PUBLIC PRESENTATIONS:** None.

6. 2. **ITEMS NOT ON PUBLISHED AGENDA:**

A. Elected Officials who represent City of Newark residents or utility customers

**3:21**

State Representative Paul Baumbach thanked Ms. Sierer and Council for their service to the community. He wished to discuss the Caffé Gelato issue. Representative Baumbach was disappointed because he believed the Special Use Permit Committee (SUPC) failed to follow the City's stated procedure regarding the Delaware Alcoholic Beverage Control Commission (DABCC). Given that the sale of alcohol to minors in Delaware was under the primary jurisdiction of the DABCC, Representative Baumbach thought the submission was [especially] troublesome. Furthermore, he suggested City Council await the DABCC's review and action on this violation before Council considered secondary sanctions. If Council chose to act today, Representative Baumbach verified with the Newark Police Department (NPD) that all three violations – which occurred in the last thirteen months – occurred at Caffé Gelato's bar. Furthermore, he found the steps offered by Caffé Gelato of shutting down its bar operation from January 2 to 16, 2019 along with three additional steps to be both significant and appropriate. Representative Baumbach suggested any alternative action on Council's part should be compared to Caffé Gelato's proposal. He encouraged Council to ask themselves if alternative action was warranted. Representative Baumbach found the SUPC's suggestion for alternative action to be excessively broad and unreasonable punitive since there were no violations at the restaurant's table service.

7. 2-B. **UNIVERSITY**

(1) Administration

**5:12**

Ms. Olsen greeted the audience and said the University's Community Engagement magazine was distributed at the dais for Council. She stated the magazine was a good example of how faculty, staff and students supported the community as a whole. Additionally, Ms. Olsen thought the magazine was a great segway for the University to brainstorm what they could do for the City of Newark. She encouraged Ms. Sierer and Council to look through the magazine and let her know if there was anything they believed would be beneficial to the community of Newark. Ms. Olsen said she would pass the information to the appropriate people at the University.

Ms. Olsen announced the University's Faculty Senate approved revisions to their transfer credit policy to better accommodate military service members. She described the revisions as a big deal for veterans and hoped Council would mention them while they worked in the community. Ms. Olsen stated their may be some credits [which they would not have received credit for previously] which may help veterans and military service members get through the college process faster. She did not have specifics at that time and told Council she can connect them with the Admissions team and Veterans Coordinator.

Ms. Sierer thanked Ms. Olsen and opened discussion to the table.

Mr. Hamilton thanked Ms. Olsen and asked her to provide further information to Council when it was made available to her. Ms. Olsen confirmed she would provide further information upon receipt. Mr. Hamilton asked if the Board of Trustees meeting was tomorrow (December 11, 2018) and Ms. Olsen confirmed this was the case. He was appreciative since the Board of Trustees meeting would be open to the public and questions and comments would be permitted. He understood the Board of Trustees would accept ten questions from the public which had to be submitted in writing. Mr. Hamilton stated he had been vocal and persistent to the effect he believed the meetings should be open to the public. He gave

credit to the University since they appeared to be moving forward towards accepting public feedback. Mr. Hamilton thanked Ms. Olsen for working diligently on Council's behalf. Ms. Olsen agreed the University seemed to be moving in the right direction and announced she would continue to work on this area to ensure people would have the appropriate time to speak. She articulated they applied feedback from Council and thanked them for their assistance on this matter.

Ms. Wallace thanked Ms. Olsen for the change and believed there was room for more improvement. However, she thought the University was moving in the right direction. She questioned if it was too late for Council or the public to submit questions for the Board of Trustees meeting on December 11, 2018. Ms. Olsen said the deadline passed and believed the University was in the process of figuring out the back-end. She expressed she would inform Council about the date of the Spring meeting and would provide them with the deadline for question submission. Ms. Wallace questioned if people would be given the opportunity to sign up for questions the day of the meeting and Ms. Olsen said she would ask the Board of Trustees this could be accommodated.

Mr. Clifton announced any person who enlisted in the Delaware Army National Guard (or Delaware Air National Guard) essentially had their education paid for by the military. Additional programs such as the Defense Activity for Non-Traditional Education Support (DANTES), allowed servicemembers to convert military-acquired education to college credits. Mr. Clifton questioned if the University accepted military education credits for college credits. Ms. Olsen was unsure if this was the case and informed Mr. Clifton she would ask the appropriate staff. Mr. Clifton applauded the University's efforts and believed the Delaware National Guard would be a perfect candidate for military credits to be transferred to the University. He expressed he desired to see more Delawareans attend the University.

Mr. Markham wanted to confirm this week was finals week and questioned when the students were required to be out of the residence halls. Ms. Olsen said students trickled out as they were done with their finals; moreover, their departure from campus was not a mass exodus. She stated she would find out the close date for the residence halls and would send the information to Ms. Sierer and Council.

Mr. Hamilton appreciated the fact Ms. Olsen worked with Council as part of the community. He announced the Old Newark Civic Association met last week and expressed Ms. Olsen attended the sessions. He appreciated the fact Ms. Olsen took notes and gave Council good feedback which promised increased cooperation between Newark's residents and the University. If Council did not see changes right away, Ms. Olsen emphasized she was working on the back-end and had communicated with University staff, specifically the Vice President of Student Life and University of Delaware Police Chief Patrick Ogden, to ensure everyone was aware of their concerns. She referenced concerns related to streets and houses and believed the University and Newark would be able to work collaboratively to address them. Ms. Olsen thanked Ms. Sierer and Council for a great year and appreciated their work and patience.

**8. 2-B-2. STUDENT BODY REPRESENTATIVE:**

**11:54**

Megan Mullennix, Student Government Association, announced the UD Undergraduate Student Government concluded for the semester. At this time, the Student Government Association primarily worked on their first proposals to the Faculty Senate. Ms. Mullennix stated Friday, December 14 was the standard cutoff date for on-campus housing, which could be extended. Ms. Mullennix referenced a question Ms. Fredericks received at the last Council meeting on November 26 regarding a bill passed for students' mental health. Pursuant to the wishes of family [after the passing of a student], counselors would block their schedules in the academic period following the family's announcement.

**9. 2-C. CITY MANAGER:**

**12:53**

Mr. Coleman wished everyone in the audience Happy Holidays and noted tonight was the last Council meeting for 2018. He thanked everyone for their role in assisting the City's accomplishments through the year. Mr. Coleman announced City offices would be closed on December 24<sup>th</sup> and 25<sup>th</sup> as well as December 31<sup>st</sup> and January 1<sup>st</sup>. Due to the Christmas and New Year's holidays, trash normally collected on Tuesday, December 25<sup>th</sup>, 2018 and Tuesday, January 1<sup>st</sup>, 2019 would be collected on Wednesday, December 26<sup>th</sup>, 2018 and Wednesday, January 2<sup>nd</sup>, 2019. Green Wednesday regular collection was over for the year; however, residents could request scheduled collections. Mr. Coleman advised the public to call Public Works to schedule a collection and stated this would be instituted until March 6<sup>th</sup>, 2019 and Green Wednesday collection would resume after that date. Christmas tree pickup would start December 31<sup>st</sup>, 2018 and would run through January 25<sup>th</sup>, 2019. During this time, Mr. Coleman reminded the public to make sure their Christmas trees were out for collection by Monday at 7:00 a.m.

Mr. Coleman said the City hosted a Safe Routes to School program at Downes Elementary School where the goal was to make walking or biking to school safer for students. As part of the project, NPD conducted a speed study which Mr. Coleman described as less formal than typical studies. NPD posted radar signs on Casho Mill Road with the digital display turned on in an effort to influence drivers' behavior a week or two earlier this year. The results of the data were reviewed, and a copy was provided to Mr. Morehead which had since been distributed to the rest of Council. Messrs. Coleman and Morehead looked at the data last week and thought it would be a good idea for the community to discuss whether the City should get involved in the project financially. Specifically, to accomplish some of the recommendations from the speed study that Downes Elementary did not have enough funding to implement. Mr. Coleman said the City received a grant from DelDOT which originated at the federal level; however, the grant had a relatively low cap in terms of projects that needed to meet federal requirements. Mr. Coleman thought the City would be able to implement some of the ideas on the program's behalf as potentially a separate contract. He believed it would be possible to meet the program's general time frame to the effect physical construction would occur in 2020 (i.e. new crosswalks and islands). He hoped to receive feedback from Council if they were interested in the City utilizing staff time to investigate; moreover, staff could develop a few options to bring to Council with a cost estimate. Projects could be budgeted down the road with a larger project.

Ms. Sierer thanked Mr. Coleman and said she would be interested in staff coming back to Council with suggestions, recommendations, and ideas for funding. Ms. Sierer asked Mr. Morehead to comment.

Mr. Morehead provided the audience with a background to the topic and informed the current speed limit on Casho Mill Road was 30 m.p.h. He stated typical speeds in the area exceeded 50 m.p.h. with most speeds on the upper end of that range during the school day. Numbers crept into the high 60 m.p.h. range outside of school hours. Casho Mill Road was originally designed to be four-lanes wide and people treated it as such. Mr. Morehead believed across the front of the school was not an appropriate place to travel those kinds of speeds. He asked Council to support staff coming back to Council on the Casho Mill Road speed issues with measures to address them. Mr. Morehead emphasized Mr. Coleman's goal tonight was to simply request authorization for staff's time to be spent investigating this matter as well as explore the methods implemented by the Safe Routes to School group. He believed the Safe Routes to School group made substantial progress on the issue and had beneficial ideas and plans.

Mr. Hamilton said the information he read was about the problem with speeding on Casho Mill Road. Messrs. Coleman and Morehead confirmed this was the case. Mr. Hamilton fully supported any efforts to get people to slow down and make the area safer for those who biked or walked to school. He asked if there was a plan for the efforts to continue to other schools and referenced West Park Elementary as he was aware of speeding problems around West Park Place. Mr. Coleman believed the plan was to focus on areas such as West Park Elementary in the future. At this time, Downes Elementary, WILMAPCO and BikeNewark submitted the application for the Downes Safe Routes to School grant. He hoped similar programs would be implemented for other schools when the current project was wrapped up.

Ms. Wallace thought Downes Elementary was located on a highly-travelled road; furthermore, people used Casho Mill Road to cut through Newark. Therefore, she believed Downes Elementary was a top priority. Ms. Wallace requested an evaluation of Chrysler Avenue with any evaluations of West Park Place. She supported staff spending time to develop recommendations on the speed concerns for Casho Mill Road and requested they come back to Council with recommendations or suggestions.

Mr. Markham said the City gathered a task force of people for the Cleveland Avenue project and asked if a similar group would be required for the Casho Mill Road area. He asked Mr. Coleman for clarification as to what he envisioned. Mr. Coleman said the Safe Routes to School program had a similar process to the Cleveland Avenue Task Force. Meetings were held with the school, parents, residents, the engineering firm, DelDOT and WILMAPCO. The recommendations which came out of the Cleveland Avenue Task Force were fairly extensive; however, the project at hand implemented recommendations they received from the speed study. Mr. Coleman clarified the City's investigation on the Safe Routes to School program would be related to flushing out the cost for the City to fund efforts as opposed to utilizing the Safe Routes to School contract. After comparing the two prices, those items would be brought back to Council for approval at the time as to whether they wished to move forward. Mr. Markham did not believe DelDOT had plans to pave Casho Mill Road in the near future and thought the City would not be able to address the issue as part of DelDOT's work. Mr. Coleman confirmed DelDOT would not pave Casho Mill Road in the near future as they paved the road a few years back. Mr. Markham said he would support staff coming to Council on the speed issues by Casho Mill Road. Mr. Coleman clarified the Safe Routes to School projects would be eligible for grant funding through the Community Transportation Fund. He stated the Community Transportation Funding was obtained through funding from legislators.

Ms. Sierer believed there was consensus on staff reviewing the speed issues by Casho Mill Road with concepts to address this issue and return to Council.

**10. 2-D. COUNCIL MEMBERS:**

**21:09**

**Ms. Sierer:**

- Attended an Opportunity Zone Summit last week (week of December 3<sup>rd</sup>, 2018) at the University. The summit was presented by the State of Delaware and the University and was hosted by the University's Biden Institute at the STAR Campus. Messrs. Coleman and Hamilton and Ms. Gray also attended the summit. Ms. Sierer wanted to briefly describe the specifics of an opportunity zone since additional educational workshops would be provided to the public moving forward. The Tax Cuts and Jobs Act (TCJA) of 2017 includes a new incentive for investors that provides relief from federal capital gains tax; specifically, when investments are made in designated redevelopment areas known as Opportunity Zones (OZs). This tax benefit has captured the attention of a wide range of stakeholders from businesses to investors and economic partners and developers. This particular summit included government officials, developers, investors and business leaders from across the nation for an opportunity to learn more about OZ's locations and new incentives. Additionally, the summit wished to assist communities in realizing the full potential of an OZ. OZs are located in cities, towns, suburbs, rural areas and university-anchored communities.

There are approximately twenty OZs in the State of Delaware located throughout the five aforementioned areas. The OZ for the City of Newark was due to the fact it was a university-anchored community; specifically, the STAR Campus and surrounding area. The summit included two panel discussions on Government and non-profit engagement and OZs and the private sector. Three breakout sessions occurred in the afternoon which focused on the University zone, the town's suburb and rural zone and the City zones. The breakout sessions were utilized to facilitate ideas exchange and were very helpful. Discussions explored the following:

1. The benefits and opportunities to advance research and student learning in public-private partnerships established within this OZ;
2. How OZs can impact the growth and development in relation to new challenges municipalities faced, and
3. Discussion on the use of OZs to revitalize neighborhoods and rebuild diverse communities.

Those areas encompassed ideas that needed to be exchanged since Newark was in an OZ because of the University and other areas in the community. She expressed the University was selected by the State of Delaware for the STAR Campus and surrounding areas as a OZ. Ms. Sierer clarified there were 25 – not twenty – OZs in the State of Delaware. Several OZs were located in the City of Wilmington and many downstate.

Ms. Sierer thought two important discussions came out of this summit. First, the community needed to be educated regarding what an OZ is and how it would affect Newark. Additionally, an education process needed to be developed which addressed needs, concerns and ideas related to this matter. Second, Ms. Sierer said the City needed to be included in the OZ process and she thought the University and the State would partner with Newark during the process. Ms. Sierer emphasized it was imperative for the City to be part of the partnership in order for it to be viable in the development of the OZ in Newark. She assured Council and the public they would receive further information in early 2019. The City in some capacity would hold workshops perhaps in collaboration with the University. In the meantime, Ms. Sierer encouraged Council and the public to visit the State of Delaware website for information on OZ in the State and City of Newark. She believed the opportunity would be impactful for the community and believed it was necessary for the City to be a part of decision making in this matter.

**Mr. Markham:**

- Mr. Markham said the Traffic Committee meeting was scheduled for Wednesday, December 18, 2018 at 3:30 p.m. in Council Chambers to discuss Cleveland Avenue. He questioned if the notice had been distributed to members of the Traffic Committee and asked if it could be sent out A.S.A.P. Mr. Coleman said the notice had not been sent and would follow up with the committee members.
- Mr. Markham hoped everyone would have an enjoyable and quiet holiday.

**Mr. Clifton:**

- Mr. Clifton thanked Mr. Coleman for addressing the issue of recycling Styrofoam. When Styrofoam is recycled, it was taken to an area near the City of Wilmington. Mr. Clifton said Mr. Coleman found out a Styrofoam recycling facility would be opened across from Siemens on Route 896. Mr. Coleman clarified the recycling facility would be located at Pencader Industrial Park. Mr. Clifton believed a

discussion occurred which discussed the potential of STAR Campus hosting a Styrofoam recycling facility. He hoped to get support to approach the State of Delaware with Ms. Olsen and Mr. Coleman for a Styrofoam recycling facility to be built on STAR Campus. Mr. Clifton said he noticed the amount of recycling that occurred in the Fountainview neighborhood. He believed Fountainview's recycling far exceeded the typical rate of 20-25%; specifically, he thought the rate of recycling was around 35-40%. Mr. Clifton expressed there were people who were conscious to the value and need for recycling. He hoped a Styrofoam recycling facility would be closer to Newark since it was one of the first towns to engage in a recycling agreement. Mr. Clifton wished to query the State on this issue and appreciated Mr. Coleman's efforts in this matter.

- Mr. Clifton received an email that was a follow-up from a friend who teaches at Newark High School (NHS). He was aware the City's employees went out to Newark's elementary schools and participated in read-aloud programs and other such endeavors. Mr. Clifton said the question came up regarding a mentoring program. His friend made it very clear that mentoring was not tutoring; moreover, mentoring was about life-skills and related issues. Mr. Clifton wondered if the City could look into or touch base with NHS to see if there was a way to develop a voluntary mentoring program for City employees to volunteer at that location. He thought Dr. Selekan, Principal of NHS, made progress on this issue. While he was unable to attend the Opportunity Zone Summit, Mr. Clifton hoped the State and University would communicate with all members of Council.

**Mr. Lawhorn:**

- Mr. Lawhorn wished everyone Happy Holidays and thanked all members of Council for their help and encouragement during his first year on Council. He thanked Ms. Sierer and staff for their assistance in following up with issues and concerns residents. Mr. Lawhorn thanked Mr. Bilodeau for his assistance in learning about the City's various procedures and policies.

**Mr. Hamilton:**

- Mr. Hamilton asked Mr. Clifton when the last leaf pickup occurred in the City. Mr. Coleman said leaves would be collected through the end of the year. Mr. Hamilton announced the Opportunity Zone Summit at the University of Delaware was a great conference and provided a substantial opportunity for the City. OZs were chosen through disadvantaged census tracts. Mr. Hamilton said Newark's OZ went from South College Avenue to Main Street and continued to South Main Street. The OZ included the area of Route 4. Mr. Coleman stated the Silverbrook neighborhood was included in the OZ. Mr. Hamilton expressed STAR Campus was a large part of that area which was the focus of 90-95% of the conversation at the Opportunity Zone Summit. He thought it was interesting there would be multi-million-dollar buildings constructed in an area which was described as a disadvantaged census track. Mr. Hamilton believed this determination was made based on income since there were many student and retirees in Newark's disadvantaged census track. One of the challenges which he hoped the University would work with the City on was the OZ was supposed to bring jobs and help disadvantaged communities. There are other areas in Newark that most people would define as disadvantaged; however, Mr. Hamilton said the University component was required for an area to be considered an OZ. Therefore, it made sense for the area of STAR Campus to be considered an OZ.

- He thought one of the interesting components discussed by panelists at the summit were to the effect projects were already underway and the City would be able to save money for future endeavors. Mr. Hamilton described this as a tax incentive for things that were already underway; moreover, he hoped it would help accelerate the development of the STAR Campus. He believed creating the right, high-paying jobs at STAR Campus would provide a positive impact on the community. Mr. Hamilton said the University had its pick of the litter because it was in between New York, Washington D.C., and Baltimore. The train station located at STAR Campus provided Newark with a huge potential; specifically, individuals would be able to take the train to Washington D.C. in the next few years. Mr. Hamilton hoped the City and the non-profit community all got together to take advantage of the opportunity. Some of the disadvantaged communities would not have the required level of education to work in the bio-medical and pharmaceutical job-fields. Mr. Hamilton believed the purpose of OZs was to assist disadvantaged communities. He hoped the City would be able to consider other areas within the OZ boundary for potential development that could attract some investment. This potentially would assist non-profits and people that were defined as disadvantaged. Mr. Hamilton wanted balance for the community of Newark and welcomed suggestions from Council and the public.

- Mr. Hamilton believed the University had a great opportunity because there were 38 potential tenants considering STAR Campus as their location. He expressed the University was selective and wanted businesses who would partner with them in research and internship opportunities. Mr. Hamilton said STAR Campus was a blank canvas with approximately 270 acres. He believed Mr. Coleman presented a valid question regarding whether the University would work the City as a community to see if the 38 tenants would work with the City, residents and non-profits to see what the needs and desires were. Mr. Hamilton expressed he wished the public attended Council more frequently and welcomed feedback.

- He appreciated the Old Newark Civic Association getting together and informed the audience they sent a letter to Council and staff which detailed their work on quality of life issues and suggestions for improvement. Mr. Hamilton questioned whether Mr. Coleman received a copy of the letter. Mr. Coleman confirmed he was copied on the letter. He believed the Old Newark Civic Association provided another opportunity for residents and staff to work on some of the City's ordinances in order improve the quality of life in Newark. Mr. Hamilton thought Newark was a great town and believed simple tweaks could be made to make the overall quality of life better; specifically, working towards mutual respect. He mentioned Ms. Olsen and the discussion regarding a good neighbor guide. When he walked through some of the neighborhoods in Newark, some students would make statements where they thought certain neighborhoods were part of the party scene. Students were genuinely surprised when they learned residents lived in these areas. Mr. Hamilton believed students thought they could host parties; furthermore, he believed a step to solving this issue was for neighbors to walk around and introduce themselves to their new neighbors with welcoming arms. He said it was better to start off on a good step as opposed to giving the impression to students they were not wanted in the area.

**Ms. Wallace:**

- Ms. Wallace followed up on the Traffic Committee meeting which was scheduled for Wednesday, December 18<sup>th</sup> at 3:30 p.m. in Council Chambers. The request to restrict bicycles on South College Avenue would be discussed. Ms. Wallace said residents suggested making the bridge a walk-your-bike zone because of the narrow sidewalk in the area. Incidents in the area occurred when residents tried to walk in the area while bicycles sped across the bridge. She invited the audience to attend the meeting and provide comments or suggestions. Ms. Wallace said people could provide feedback and their opinion on this matter if they were unable to attend the meeting on December 18<sup>th</sup> via email at [jen@jenwallacefornewark.org](mailto:jen@jenwallacefornewark.org). Ms. Wallace thanked the public for attending the Council meeting this evening and looked forward to public comment.

**Mr. Morehead:**

- Mr. Morehead welcomed the public to the Council meeting and said he had a pretty good idea why the meeting was well-attended. He echoed Ms. Wallace's statements regarding public involvement and expressed involved and informed residents helped Council serve the community effectively. Mr. Morehead emphasized Newark was the residents' town and identified members of Council were residents as well. He thanked the public for their commitment and involvement to Newark. Mr. Morehead wished everyone Happy Holidays and hoped they would be safe during the season.

**11. 2-E. PUBLIC COMMENT:**

**42:15**

Amy Roe, District 4, said the Old Newark Civic Association (ONCA) reformed and meetings occurred for the past six months. Dr. Roe expressed some of her neighbors were in the audience tonight including her high-school English teacher. She announced the ONCA met to discuss possible solutions to what largely was a party, noise and nuisance issue in their neighborhoods which were near the University. Dr. Roe noted the University was ranked as the number one party school by the Princeton Review. The University also was ranked number one for hard liquor and Greek life; moreover, the University was ranked ninth for beer and eleventh for students who studied the least. Dr. Roe said the rankings did not surprise those who lived in her neighborhood because they had lived among the University party scene for years. She stated the ONCA meetings were open the public and City staff, NPD officers, elected officials and the University had attended them. The ONCA's Steering Committee met with the Newark Landlords Association. At these meetings, rigorous conversation occurred regarding what steps could be taken to reduce the negative impact of having the nation's number one party school as their immediate neighbors.

Dr. Roe said the Steering Committee was still in the research process for some things; however, there were a few things they thought the City could and should act on now to reduce the problems they were experiencing. She announced super parties were one of the areas which made living in Old Newark a challenge. Large parties got out of control and she believed the NPD did not have the necessary tools to address the problem before it ruined residents' nights. Dr. Roe believed updating Chapter 23 of the Municipal Code under the section for Special Events was something the City could do now to prevent parties from becoming super parties. Currently, if someone had a party on private property, they could have 150 people without needing a Special Use Permit. Dr. Roe expressed she and her neighbors would like to see the number reduced to 50; specifically, a Special Use Permit would be required for greater than 50 individuals to attend the party. Additionally, there were a few associated requests regarding who was responsible and adding additional community service hours for violations and revisiting fines. Dr. Roe announced she provided a handout with suggestions to save time. Dr. Roe believed the requests could be enacted without negatively impacting churches. Currently, the University was exempt from the private social gathering ordinance and there was no reason churches could not receive the same exemption.

Dr. Roe thought community service hours should be added to penalties for nuisance behaviors. Fines for nuisance behaviors should be evaluated along with aggressive prevention techniques. For example, Dr. Roe mentioned setting up mobile booking stations in key areas during popular party weekends like St. Patrick's Day. She understood a new ordinance was in the works for unlawful gatherings and was encouraged by this fact. However, while the details of that ordinance were being worked out, Dr. Roe felt the City should move ahead now to prevent super parties through minor changes through the Municipal Code that were listed in her handout.

Sal Desiderio, District 4, announced he lived at 9 Ritter Lane and was part of the ONCA. He informed the audience he moved to Newark 18 years ago and described Ritter Lane as a family street with children at that time. Mr. Desiderio said Ritter Lane used to be a nice area to live in; however, families gradually moved out due to the number of parties and activities that occurred during these parties. As families moved out, the neighborhood became more of a rental area. Mr. Desiderio announced he had people engaged in sexual acts on his lawn. Every Sunday morning, he could count on red "flowers" in his yard and observed people urinating on their side of the fence that came through his lawn. Mr. Desiderio said his granddaughter lived with him for several years and they were unable to go into their own yard because of people trespassing. He stated vandalism occurred on his property and was related to the rentals. Mr. Desiderio did not blame the NPD and believed they were doing the best they could. He echoed Dr. Roe's suggestion to the effect he believed decreasing the party numbers to 50 individuals and enforcing this would be more beneficial than the 200-300 people who he claimed went into his yard.

Mr. Desiderio was able to communicate with some of the renters and an agreement was reached between himself, the certain renters and some of the landlords. However, there were many issues that needed to be resolved. He informed the audience there were a group of renters who routinely blocked Route 896/South College Avenue at the railroad bridge; specifically, renters played football every nice day from one side of South College Avenue to the other. There were so many people playing football in the area that traffic was unable to get over the bridge or leave the area. Mr. Desiderio appreciated the efforts at STAR Campus and acknowledged the City's efforts to bring more jobs to Newark. While he supported these efforts, he thought the issues with the railroad bridge and drunks laying on the pavement would deter people from bringing their families to Newark. Mr. Desiderio believed limiting the number of people at parties would assist with this issue. Additionally, he recommended the lease-holders be held responsible for parties, whether it be the parents or students. Mr. Desiderio firmly believed increased responsibility had the potential to curtail the quality of life issues he and other dealt with daily. He believed small changes would require less work on the part of the NPD. Overall, he thought improving the quality of life for residents would be beneficial to Newark as a whole. He believed Newark's businesses would benefit; specifically, new businesses, old businesses, and businesses on Main Street. Mr. Desiderio thought people would not bring their children to businesses on Main Street if they had to walk through drunks. He reiterated his own granddaughter was not allowed out of his house due to undesirable behavior created through certain renters and the party scene. Mr. Desiderio expressed more and more people wanted to leave Newark and did not blame them.

Ron Walker, 45 Kells Avenue, noted he had lived on the corner of Kells Avenue and Wollaston Road for approximately 50 years. For seven years prior, he lived on Wollaston Avenue. During his time as a resident of Newark at both locations, Mr. Walker thought it was safe to say the quality of life worsened each year. There was no doubt in his mind student issues were at an all-time high. In the past 24 hours, Mr. Walker said Council received an email from Dan Beaver. Along with his email, Mr. Beaver included photos he took regarding incidents that occurred on Wollaston Avenue in front of his house. Mr. Walker believed the incidents in front of Mr. Beaver's house were quite disturbing and noted both he and his wife witnessed most incidents. He encouraged Council to look at the pictures in the email and ask themselves if this neighborhood would be one they desired to live in. Mr. Walker said good homeowners were being driven out of his part of the City (Old Newark). He attributed the reason for good homeowners leaving this area was due to the City not aggressively addressing the issues of partying in Newark. Ultimately, Mr. Walker said the proposals presented earlier by Dr. Roe were very reasonable and encouraged Council to look at them. He believed the ONCA had spoken about the issues in great detail and reiterated the requests were reasonable to help address the quality of life for residents in the City of Newark. Mr. Walker said Council had the responsibility to protect the Old Newark area's quality of life, regardless of whether they lived in that section of the City. He said members of Council who did not believe they were responsible to protect residents' quality of life in all areas of the City did not belong on Council. Mr. Walker believed all members of Council were good people and counted on them to follow through with these issues to make his neighborhood and the whole City more livable.

Matthew Gerike, 44 Kells Avenue, lived across the street from Ron Walker and was a member of the ONCA. He had three major concerns associated with students partying in the area and concerns with the proliferation of rental properties that occurred in the neighborhood. He mentioned his and his



neighbors' property values would decrease if more properties became rental properties. If he wished to sell his house, Mr. Gerike stated people would look at the comparable values of the neighborhood and value his home less than he deemed appropriate. Additionally, rental properties were not very attractive for families who looked to purchase houses located next to a party house or fraternity house. Mr. Gerike informed the audience he observed damage and theft of street signs in the neighborhood and he believed the perpetrators were in their late teens or 20s. Vandalism occurred to his neighbors' properties; therefore, Mr. Gerike was very concerned about students who partied out of control in the neighborhood.

Taylor Green, Public Information Officer and Manager of Communications for the Christiana School District (CSD), was excited to provide a brief update on CSD since her last presentation to Council on November 12<sup>th</sup>. On Friday, December 7<sup>th</sup>, CSD experienced a victory for their district, community, and the State of Delaware. Downes Elementary School was named a National PTA School of Excellence. This deserved recognition because Downes Elementary School was [only] the second school in the State to achieve this title. Ms. Green thanked Ms. Sierer, State Senator David Sokola and U.S. Senator Chris Coons for being part of the special event on Friday, December 7<sup>th</sup>. She thanked the families, staff, and community members who worked hard to earn this title. With this award, Downes Elementary School became a model of excellence for schools across the country. In fact, the Delaware PTA president told Ms. Green and CSD staff at least five other schools already decided to pursue the award for themselves. The excellence continued in CSD today when it was honored in Clayton, Delaware, where they represented a quarter of the 16 schools that were named recognition schools by the Delaware Department of Education. Ms. Green said the recognition was due to students' exceptional performance on State tests and remarkable progress in closing the achievement gaps between student groups. The award-winning schools were Gallagher, Jones, West Park Place and Wilson Elementary Schools.

West Park and Wilson Elementary Schools were the only two schools in the State to be named National Association of Elementary and Secondary Education Act distinguished schools. Ms. Green said CSD also made progress over the last month with the Wilmington Schools Partnership Plan as they worked to reconfigure those schools. Three outstanding school leadership teams were named to lead Bancroft Elementary, Bayard Middle School and Stubbs Elementary School beginning next school year. CSD's school board approved new attendance zones to determine which schools students would attend next year. CSD's new Strategic Plan was underway with four new task-force committees built and launched as of this month. The Communications and Engagement Task-Force, led by Ms. Green, would hold its first meeting on December 20<sup>th</sup>. Additionally, the Facilities, Culture and Climate, and Special Education task-force committees met monthly. Ms. Green informed the audience they could listen to all of the meetings on CSD's website ([www.christinak12.org](http://www.christinak12.org)).

As a follow-up to her last presentation for Council on November 12<sup>th</sup>, Ms. Green noted she had the pleasure of spending time at the Newark Senior Center and connecting with their staff. Additionally, she attended the Newark Futures Workshop last week. Ms. Green thanked Ms. Sierer and Council for helping her connect with those resources in the community. Finally, she invited the audience to attend an upcoming concert in the CSD's Winter Concert Series. Ms. Green said the best way to learn about CSD was to visit the district's schools and meet the students and staff in those buildings. The holiday season presented a wonderful opportunity to do so with performances by CSD's talented choirs and bands throughout the month of December. Ms. Green stated the full concert schedule could be found on CSD's website ([www.christinak12.org](http://www.christinak12.org)).

Trevor Nix, District 1, announced he also was a student at the University of Delaware. He wanted to address the concerns regarding partying since he believed many University students might not necessarily understand the public and Council's concerns. Mr. Nix knew residents on Wollaston Avenue and Ritter Lane; specifically, he mentioned he was good friends with residents in that area. He believed students did not intend to disturb residents; however, he thought students might not be cognizant of the disturbance and issues created by partying. Mr. Nix suggested residents should attempt to have solid conversations with students regarding how they could help reduce annoyances and disturb them. At the end of the day, Mr. Nix said all residents and students were people who wanted to live together in a good community. Mr. Nix thought he potentially had an economic solution to the concerns of diminishing property values in the neighborhood. He stated he was willing to discuss possible solutions to these concerns and collaborate with residents and Council to address them.

Meghan Mullennix, Student Government Association Representative, said she was very happy to hear residents with serious complaints about the quality of life in their neighborhoods were taking steps such as coming together to develop solutions. She encouraged groups to incorporate students into these discussions to provide the full perspective to both groups. Ms. Mullennix was troubled to hear residents experienced such difficulties with students; moreover, she said she was a student herself and believed

the majority of the student body did not engage in nuisance behavior. She hoped residents and students could work together in an inclusive community to address these issues.

Michael Cox, District 4, spoke in favor of the ideas shared by Dr. Roe. He supported fostering positive relationships among the various members in groups of the community. When things went wrong – and there were super parties and nuisance behaviors – he believed there needed to be consequences.

Mr. Hamilton addressed Ms. Mullennix and stated she could be included in meetings with the ONCA. He advised her to contact Dr. Roe or himself to be added to the email list. Ms. Sierer suggested Council could identify for Dr. Roe or others who spearheaded efforts with students in that area those that might be interested in working with the ONCA.

Mr. Clifton addressed Mr. Gerike's point and announced there were 130 rental property permits in the entire City of Newark in 1988. In 1999, when the City enacted student-rental ordinances, the number of rental permits in the city increased to 1150-1250. Mr. Clifton believed the number of rental permits hit a high of 1400; however, he did not know the amount of rental permits in the City today. He expressed interest in the inventory conducted in 1999 or 2000 regarding how many rental properties and clandestine rental properties were on each street in the City of Newark. Additionally, there were non-exempt and exempt streets. Mr. Clifton was curious to see the results from the inventory to see if the City protected the streets which needed to be protected. He asked Mr. Coleman and Ms. Gray could provide this inventory to Council in the beginning of the new year. Mr. Clifton said it was important to figure out where the rental property permits were today versus where they were in 1999.

Mr. Gerike believed the City performed a study on rental properties and supposed associated student-rental permits. He stated the study was based on rental permit data alone and did not include properties which Mr. Clifton referred to as "clandestine rental properties". Mr. Clifton reiterated he would like to see the study as some streets were exempt while others were not. He believed the City needed to review the data to see if they exceeded the number of permitted rentals and figure out how it happened.

Sal Desiderio, District 4, said there were some parents who bought properties for their children who then rented the properties. Students would rent such properties to their friends or others; therefore, Mr. Desiderio believed properties of this nature needed to be included in the data to provide an accurate number. Mr. Desiderio said the possibility existed for the data to show there were four rental properties when there were ten on that street.

Mr. Lawhorn stated Council would begin discussions related to rental properties and quality of life issues for residents in January 2019. He announced the last item on tonight's agenda would discuss the proposal to discuss student housing. Mr. Lawhorn thought measures for enforcement as well as looking for ways to improve these issues was a great idea. He believed the public's concerns (i.e. super parties, quality of life issues related to nuisance behavior, and diminishing property values) were valid and supported data generated by the Planning Department on the real root cause of the problem. Mr. Lawhorn believed the problem was related to the question of why students lived in residential areas. He stated students lived in residential areas throughout the City and significantly affected the area around Kells Avenue. Mr. Lawhorn expressed the true root cause of the problems was due to the University's growth. Moreover, the University's growth rate grossly outpaced any growth in development from the University itself in generating dorms and growth within the City in areas where they would like students to live (i.e. not in residential areas). Mr. Lawhorn said it was astounding how fast the University grew relative to where the City provided beds to sleep in. As a result, people found it financially beneficial to rent houses out. Due to this fact, there were renters who did not care for the property in the same manner as the property was rented for profit. Mr. Lawhorn believed it was necessary to determine the balance of supply and demand between how much the University has grown versus the level of housing provided by the City. He clarified it was necessary to figure out how much housing the City supplied in the area they wanted students to live. Mr. Lawhorn reiterated Council would spend time on this issue in the near future and encouraged the audience to stay tuned and be part of the conversation.

Mr. Markham questioned who would take the lead or ownership of these suggestions from Kells Avenue and the ONCA. Mr. Hamilton said he, Sgt. D'Elia and Mr. Bilodeau were discussing the issue. He thought there were a couple ways to address it. Mr. Hamilton thought behavior of certain students needed to be addressed and expressed there were students in his own neighborhood who were quiet and did not cause disturbances. He articulated students were not a problem just because of their status; however, there were issues with certain students' behavior that needed to be addressed. There was a house in Mr. Hamilton's neighborhood – which may or may not be students – which seemed to have issues that he believed needed to be addressed in different ways. To answer Mr. Markham's question, Mr.

Hamilton reiterated he, Mr. Bilodeau and Sgt. D'Elia worked on this issue and would include the suggestions from the ONCA. He hoped to bring a plan in multiple forms sometime in January 2019.

**12. 3. APPROVAL OF CONSENT AGENDA:**

- A. Approval of Council Minutes – November 26, 2018
- B. Approval of Planning Commission Minutes – November 6, 2018
- C. **First Reading – Bill 18-30** – An Ordinance Amending Chapter 1, General Provisions, Code of the City of Newark, Delaware, By Implementing a Late Fee for Past Due Billings and Invoices – **Second Reading–January 14, 2019**
- C. **First Reading – Bill 18-31** – An Ordinance Amending the Comprehensive Development Plan by Changing the Designation of Property Located at 209-225 Haines Street – **Second Reading – January 14, 2019**
- D. **First Reading – Bill 18-32** – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from RD (One-Family Semi-Detached Residential) to RA (Multi-Family Dwellings – High Rise Apartments) 0.819 Acres Located at 209-225 Haines Street – **Second Reading– January 14, 2019**
- E. **First Reading – Bill 18-33** – An Ordinance Amending the Comprehensive Development Plan by Changing the Designation of Property Located at 83-105 New London Road and 40-42 Wilson Street – **Second Reading– January 14, 2019**

**1:11:35**

Ms. Bensley read the consent agenda into the record.

MOTION BY MR. MARKHAM, SECONDED BY MS. WALLACE: TO APPROVE THE CONSENT AGENDA AS RECEIVED.

MOTION PASSED. VOTE: 7 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Sierer, Wallace.

Nay – 0.

**13. 4. ITEMS NOT FINISHED AT PREVIOUS MEETING: None.**

**14. 5. APPOINTMENT TO BOARDS, COMMITTEES AND COMMISSIONS: None.**

**15. 6. SPECIAL DEPARTMENTAL REPORTS:**

- A. **Resolution No. 18-\_\_**: A Resolution Creating the City of Newark Records Retention Schedule – City Secretary

**1:12:56**

Ms. Bensley read item 6-A into the record.

Ms. Bensley announced she was the City Secretary for the City of Newark. She stated Samantha Corson, Records Management Coordinator for the City's Digital Records Project, was with her this evening to present the resolution. Ms. Bensley stated the Digital Records project for the City started in 2014. The project began with the Legislative Department as the pilot in 2014. The Records Division was created in 2016 as part of the IT Division of the City's Administration Department. At that time, the initial inventory of paper records estimated there were 7.7 million pages of records in the Municipal Building, which did not include the NPD. The Records Division transferred to the Legislative Department in October 2017 as part of a reorganization and reassignment of some IT positions. The Division had two full-time regular employees, one part-time regular employee and two light-duty temporary employees. Ms. Bensley said light-duty employees rotated in and out as needed for placement from other departments. At this time, one of the light-duty employees was permanently assigned to the Records Division while the other light-duty employee was temporarily assigned. Additionally, the Records Division worked with the CSD's Networks program who performed document preparation at no additional cost to the City.

The Records Division scanned almost 1 million pages of records into the Digital Records Management System as of November 28, 2018. Almost 800,000 of the 1 million pages were scanned since the creation of the Records Division in 2016. Ms. Bensley said there were approximately 165 boxes of paper records and over 1,000 large maps that were sent to the State Archives in Dover for permanent preservation. There were also over 1,000 boxes of paper records that had either been scanned and/or met the retention schedule and were approved for destruction by State Archives and shredded on-site. To give the audience perspective of how these numbers related to the others, each box holds about 2,500 pieces of paper. Ms. Bensley announced a Strategic Plan was formed for the Records Division and was posted on the City's website as part of the packet item and provided to Council. Ms. Bensley announced she approved the plan as the City Secretary along with Acting City Manager Coleman. She noted a City of

Newark Records Retention Schedule was created in conjunction with the City's departments. Ms. Bensley said the City of Newark Records Retention Schedule was before Council tonight for approval by way of resolution.

Ms. Bensley listed the short-term goals for the project:

1. Approval by Council of the Records Retention Schedule tonight;
2. After the Records Retention Schedule was approved, the Records Division would work with IT for the implementation of purge scheduled in the digital record management software. The purge would match the approved retention schedule and would ensure the electronic and paper versions of all the documents were managed the same way, and
3. Training would be completed for all departments on Tyler Content Management (TCM) as it was the document management system used in the Records Division. The various departments' roles and processing records would be brought to the Records Division for scanning or disposal.

The long-term goals were as follows:

1. To complete a metadata quality control review for documents imported from a previous software program and from other past projects such as building permits;
2. To open public web portals for online document searches for certain document types. This would cut down on FOIA requests which would save time for staff; additionally, citizens would be able to save money since they would be able to find documents themselves, and
3. To bring electronic documents into compliance with the City's records retention schedule; specifically looking at e-mail.

For the Records Retention Schedule itself, Ms. Bensley and Corson met with staff from each department regarding the State's records retention schedule and how it fits the needs of all City departments. Through those meetings, it was found that while the State's records retention schedule was a good basis for the City's document, there were still areas that could be improved to meet the City's business needs. The City's schedule used the State's records retention schedule as a baseline; however, the City's schedule added additional time where appropriate for the businesses needs of Newark. Ms. Bensley said nothing in the resolution before Council tonight has less time than what the State had; however, there were a few areas where they requested to keep documents for more time. There were six areas which Ms. Bensley asked for a longer retention time: administrative support records, inspection reports, job announcements, travel requests, personnel requisitions, and utility billings.

The six areas were identified when Ms. Bensley and Corson met with each department who expressed they had a business need which required them to keep documents for periods longer than the State's schedule required. Additionally, there were a couple areas of records which did not match anything in the State's retention schedule. For this reason, Ms. Bensley and Corson created a Newark specific retention schedule for three types of documents that did not match anything in the State. Two of the areas where records were not addressed by the State's retention schedule were in the Parks and Recreation Department for their different programs regarding before and after school care as well as the meal-counts in both programs. In the Planning and Development Department, Special Use Permits (SUP) were unique to the City of Newark.

Ms. Sierer thanked Ms. Bensley and opened discussion to the table.

Mr. Morehead recognized the tremendous amount of work associated with the City's Records Retention Schedule and thanked Ms. Bensley and Corson for their efforts. Additionally, he thanked Ms. Bensley and Corson for making improvements to the system the City previously had in place. Mr. Morehead announced Ms. Bensley was one of the few employees who worked directly for City Council; therefore, it was Council's responsibility to tell her when she did a great job. He questioned why the matter at hand was a resolution as opposed to an ordinance. Ms. Bensley explained the reason the matter was a resolution was due to the fact adopting all the individual retention times into the City Code would be for all intents and purposes an entire chapter or large article. She stated the resolution was utilized to provide Council with flexibility in the future to change or amend the plan. Furthermore, Ms. Bensley articulated the reason the matter was presented as a resolution was to ensure it was on Council's radar and in the public eye regarding the expectations for City records. Ms. Bensley said they could have chosen to follow the State's record retention schedule as was the case with many places; however, they wanted to ensure the City's retention schedule had buy-in from staff, Council, and the public regarding a unified set of expectations. Mr. Morehead asked if the plan would be treated as if it were effectively in Code and Ms. Bensley confirmed this was the case. Ms. Sierer said Council would vote on the resolution this evening.

With the exception of the six areas where longer retention time was requested, Ms. Bensley stated all areas were required by State law to at least meet the State's minimum requirement for retention.

Ms. Wallace thanked Ms. Bensley and Corson for the presentation and wished to comment on the project's long-term goals. She appreciated the inclusion of creating public web portals as well as the compliance with the e-mails. Ms. Wallace was glad these issues were on the City's radar. She believed the matter was presented by way of resolution since it dealt with internal policy that needed to be followed. By creating a resolution, Ms. Wallace articulated Ms. Bensley educated Council and the public and ensured the plan had more weight than simply being an internal policy with compliance. Ms. Wallace stated she worked in the University's Archives and Records Management Department and understood the importance of having departmental buy-in of following records retention schedules. She noted departments needed to do the work to make the plan happen.

Mr. Hamilton thanked Ms. Bensley for the presentation and supported the resolution as a big proponent for open government. He expressed the information would be available for the public. Mr. Hamilton believed the City specific records retention schedule would make it easier for everyone and believed the City was able to clean out a lot of paper downstairs. Ms. Bensley confirmed the Records Division was able to clear out a lot of paper downstairs. Mr. Hamilton said all information was backed up and expressed people did not need to worry about the records getting lost. He announced the City used to keep roomfuls of data. Ms. Bensley articulated the City had what she coined the CC disease where everyone liked to send 10 copies of all information to everyone. Therefore, she believed a large chunk of the 1,000+ boxes that were destroyed were duplicates. Mr. Hamilton praised Ms. Bensley for her efforts and acknowledged the scope and tedious nature of the project.

Mr. Clifton echoed Mr. Morehead's comments and believed the City specific records retention plan was a great idea. He thanked Ms. Bensley and Corson for their hard work.

Mr. Markham questioned whether the term destruction pertained to paper documents regarding how long they were kept in storage. Ms. Bensley reiterated the City Records Retention's short-term goals and emphasized the implementation of purge schedules. She announced electronic versions would be managed in the same way as paper documents. Once the resolution was approved and the purge schedules were implemented with IT, the electronic version would be on the same retention schedule as the paper version. Ms. Bensley said treating both electronic and paper documents by the same schedule would ensure accuracy as to what was retained or destroyed. Mr. Markham suggested the idea be given more thought as he stated electronic media was cheap and much effort was spent putting data and documents into electronic form. He announced his workplace decided they did not want information after 10 years. While this may be the case for Ms. Bensley and the City, he reiterated electronic document management was very different from paper. Mr. Markham thanked Ms. Bensley for her efforts and believed she did a good job with the plan.

There was no public comment.

MOTION BY MS. WALLACE, SECONDED BY MR. HAMILTON: TO APPROVE THE RESOLUTION ADOPTING THE CITY OF NEWARK RECORDS RETENTION SCHEDULE AS PRESENTED.

MOTION PASSED. VOTE: 7 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Sierer, Wallace.  
Nay – 0.

**(RESOLUTION NO. 18-W)**

**16. 7. RECOMMENDATIONS ON CONTRACTS & BIDS:**

- A.** Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the Construction Costs of Preston's Playground

**1:26:05**

Mr. Spadafino read the recommendation into the record. He believed Council had a chance to read the memo dated November 30<sup>th</sup>, 2018 and wanted to recommend Council to waive the bid process in accordance with the Code of the City of Newark for the payment of construction costs for Preston's Playground in the amount of \$83,298.70 to Corrado Construction of New Castle, Delaware. \$78,000 would be reimbursable from the State Parks Outdoor Recreation Parks and Trail Group Program (ORPT) grant.

Ms. Sierer thanked Mr. Spadafino and opened discussion to the table.

Mr. Markham questioned if the out of pocket cost for the City was \$5,300 and Mr. Spadafino confirmed this was the case.

Mr. Morehead said he did not remember waiving a bid after the fact during his time on Council. He asked Mr. Bilodeau if it was possible to waive a bid after the fact. Mr. Bilodeau said this practice generally was not recommended; however, the legality of the practice was questionable.

There was no public comment.

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: TO WAIVE THE BID PROCESS IN ACCORDANCE WITH THE CODE OF THE CITY OF NEWARK FOR THE PAYMENT OF CONSTRUCTION COSTS FOR PRESTON'S PLAYGROUND IN THE AMOUNT OF \$83,298.70 TO CORRADO CONSTRUCTION IN NEW CASTLE, DELAWARE.

MOTION PASSED. VOTE: 6 to 1.

Aye – Clifton, Hamilton, Lawhorn, Markham, Sierer, Wallace.

Nay – Morehead.

**17. 7-B. RECOMMENDATION TO AWARD RFP 18-02 – PROFESSIONAL STAFF AUGUMENTATION FOR IT DESKTOP SUPPORT SERVICES**

---

**1:28:52**

Mr. Del Grande stated RFP 18-02 for Desktop Support Augmentation was advertised by the City with 13 firms submitted proposals and fee schedules. The proposals were received and scored based on each firm's organizational structure, services and capabilities they offered as well as the qualifications of the assigned staff. The top three ranked firms included:

1. Vtech Solutions of Washington D.C (scoring 80/100);
2. Diamond Technologies, a Delaware Company (scoring 77/100), &
3. Staffactory of Los Angeles, California (scoring 74/100).

All firms included a time and material hourly rate, which ranged from \$34-\$35 an hour for qualified technicians. Vtech Solutions was the top-ranked firm with an hourly rate of \$35 per hour. This was the same rate the City paid last year in a separate RFP. Selecting Vtech solutions resulted in a weekly cost of approximately \$1,313, with an annual cost of \$68,250. The length of the contract would be for one-year and would begin on January 2<sup>nd</sup>, 2019 and end on December 31<sup>st</sup>, 2019. The contract may be renewed or extended for an additional year with a signed agreement between both parties and approval from the City Manager and Council. Funding for a full-time contractual desktop support technician for 2019 was approved in the operating budget in the amount \$80,000. Mr. DelGrande recommended Council award RFP 18-02 – Professional Staff Augmentation for IT Desktop Support Services – to Vtech Solutions of Washington D.C. at a rate of \$35 an hour and not to exceed an annual cost of \$80,000.

M. Sierer opened discussion to the table.

Mr. Markham stated for the record Diamond Technologies was his previous employer. He announced he would abstain from any conversation regarding that company.

Mr. Clifton said Diamond Technologies was only a couple points behind Vtech Solutions and had a couple questions surrounding this matter. He questioned if there was any benefit in having a local company regarding the execution of this contract versus a company in Washington D.C. or California. Mr. Clifton thought the City should lawfully and logically give the work to a local company which would keep local individuals employed. Mr. Del Grande said Vtech Technologies and Staffactory Solutions had local representation in the Newark area and clarified their home offices were in Washington D.C. and California. He emphasized the RFP was about onsite, desktop support and a physical person would be in the City Hall.

Mr. Morehead said he believed there were 259 employees who worked for the City. Mr. Coleman clarified there were 249 employees that worked for the City. Mr. Morehead announced Council decided to hire this position as a contract position which saved the City a significant amount of money in benefits; specifically, medical benefits and others. Benefits approached close to 62% of an individual's salary in additional benefits. Mr. Morehead thought the desktop support position saved the City money in the future.

Mr. Hamilton looked at the scores for Vtech Solutions which he described as a B- due to its ranking of 80/100. He asked Mr. Del Grande how confident he was in the score of 80/100 in this particular field.

As one of the three reviewers, Mr. Del Grande believed Vtech Solutions, Diamond Technologies and Staffactory were the top three applicants. He said Ms. Montgomery and Messrs. Farrall and Brainard assisted him with the review. The scores from the four parties involved in the review were averaged and reiterated all three companies scored close to each other. While they believed all three firms were good candidates, determined Vtech Solutions offered the most for the City regarding onsite availability with their response time. Due to the fact the City had issues in previous years with not potentially getting the best candidates they felt were the best fit for the City, Vtech Solutions had a deep bench which provides the City with the ability to replace employees as necessary. Mr. Hamilton restated his question to the effect whether 80/100 was a good score. Mr. Del Grande reiterated confidence in all three firms. Mr. Hamilton thought the score was similar to Quantitative Chemistry scores in college where 35/100 was an A. Mr. Del Grande confirmed this was the case.

There was no public comment.

MOTION BY MR. MOREHEAD, SECONDED BY MR. LAWHORN: TO APPROVE THE RECOMMENDATION ON RFP 18-02 – PROFESSIONAL STAFF AUGMENTATION FOR IT DESKTOP SUPPORT SERVICES – TO VTECH SOLUTIONS OF WASHINGTON, D.C. AT A RATE OF \$35 AN HOUR, NOT TO EXCEED THE ANNUAL COST OF \$80,000.

MOTION PASSED. VOTE: 7 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Sierer, Wallace.

Nay – 0.

**18. 8. FINANCIAL STATEMENT: (Ending October 31, 2018)**

**1:36:40**

Mr. Del Grande said the October Financial Statement did not reflect many significant changes when compared to September's Financial Statement. The reasons for the City's revenue doing well were attributed to the City's revenue as a result of Real Estate Transfer Tax through large commercial properties. Mr. Del Grande said the City experienced an abnormally large amount of transfers this year compared to previous years. The Stormwater Utility added to this revenue along with permit fees from commercial activities on STAR Campus.

Expenditures were relatively on track with a small deficit which was due primarily to the increase in the sewer fee New Castle County passed on to the City of Newark when they increased rates by 12% in July. However, offsetting revenue covered the difference. The cash balance at the end of October was \$39.2 million which included \$21.7 million in the City's cash reserves and \$17.5 million in operating cash. Mr. Del Grande reminded Council this time of the year generally was a higher point due to taxes coming in at the end of September. Ultimately, the number would start to trickle down. Electric regulatory liability carried a credit balance of \$3.7 million. When the rate stabilization adjustment (RSA) occurred in March of 2019, the City would have the ability to refund some of the liability to their electric rate carriers. Fortunately for Newark, the cost to purchase electric dropped. Therefore, the City would be able to pass some of the savings along to residents.

Delinquent property tax bills would be mailed by the end of the week. For the first time, people could pay their bills online for property taxes. Mr. Del Grande said the online payment feature was helpful as it increased the ease for residents to pay delinquent and non-delinquent bills from the comfort of their homes instead of coming in to City Hall.

The week of December 3<sup>rd</sup>, 2018, the City closed on four State-Revolving loans. While they were in the beginning stages on the process, Mr. Del Grande said the City used a 3% interest rate in their estimates and the closing rate came in at 2.489%. Mr. Del Grande stated the difference of approximately 0.5% equated to \$336,000 in interest savings on the life of the loans.

Ms. Sierer thanked Mr. Del Grande and opened discussion to the table.

Mr. Markham thanked Mr. Del Grande for changing the wording on the financial statement as it increased clarity and made it easier to understand. He was encouraged by the cash balance and stated he never observed a number like this during his time on Council. Mr. Markham acknowledged Mr. Del Grande's statement to the effect the balance would trickle down; however, he expressed he observed scarily low numbers over the years. With the decrease in temperature, Mr. Markham questioned the state of electric sales with the colder weather. Mr. Del Grande informed Mr. Markham the City received the numbers in October and expressed they were ahead in the sales category for the year. Since the cost to purchase power from DEMEC was lower than original estimations, Mr. Del Grande said an over-collection

occurred. For this reason, Mr. Del Grande announced he would come back to Council in March of 2019 for a potential refund or credit for the RSA on the electric bill. With the future growth of STAR Campus and other businesses in the City, Mr. Del Grande projected electric sales would increase by 2.6% in 2019 overall. The rate of electric sales for 2018 was very steady. Mr. Markham questioned if November trended well. Mr. Del Grande expressed they were still a few days away from seeing the November reports; however, there were no indications at this point of any issues.

Mr. Hamilton said he was aware some buildings would be coming online; however, he stated the City would lose the Christiana Towers. He asked Mr. Del Grande if he knew how much electricity the Christiana Towers used or if it was factored into the equation. Mr. Del Grande expressed they generally accounted for a little bit of give and take. He did not have the numbers for the Christiana Towers' electric usage and expressed he would look into this matter and provide the information offline. Mr. Hamilton questioned whether the University Courtyard would flip over to the University's rates in 2019. Mr. Coleman said it was still an open question regarding whether the University Courtyard would flip over to the University's rates. The infrastructure internal to the University Courtyard was owned by the City. Due to this fact, issues were created as to the wording of the ESA and the minimum size of accounts. Mr. Coleman reiterated it was unclear at this time regarding when or if the Courtyards would switch to the University's rate.

There was no public comment.

MOTION BY MR. MARKHAM, SECONDED BY MR. HAMILTON: TO ACCEPT THE FINANCIAL UPDATE FOR THE 10-MONTHS ENDING OCTOBER 31, 2018 AS PRESENTED.

MOTION PASSED. VOTE: 7 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Sierer, Wallace.

Nay – 0.

**19. 9. ORDINANCES FOR SECOND READING & PUBLIC HEARING:**

- A. Bill 18-27 – An Ordinance Amending Chapter 25A, Stormwater, Code of the City of Newark, Delaware, By Increasing the Stormwater Fee Effective January 1, 2019**

**1:42:48**

Ms. Bensley read Bill 18-27 into the record by title and noted the Second Reading and Public Hearing in this matter was advertised in the Newark Post on November 30<sup>th</sup>, 2018.

During discussions for the 2019 budget, Mr. Del Grande stated Bill 18-27 was presented to Council in order to present legislation to amend the Stormwater Fee, increasing the rate by 20%. This equates to \$0.59 increase on the average to the equivalent stormwater unit monthly rate. The cost to residents would be approximately \$6-\$7 per year. Ultimately, this would raise an additional \$380,000 in annual revenue for the City. All proceeds from the additional revenue would go towards the Rodney Project for the debt-service for 2019 as well as the parcel itself in the future.

Ms. Sierer thanked Mr. Del Grande and opened discussion to the table.

Mr. Markham questioned if the rates were tied directly to the referendum. Mr. Del Grande expressed the rate proposed was less than what the City initially came in for; however, it was associated with the referendum. Mr. Markham asked if a new tier for the stormwater charge was established. Mr. Del Grande clarified a new tier was not established. Mr. Markham questioned what measures would be taken for residents who paved their backyards as he thought they should not pay the same as a regular residential property. He asked if this matter was scheduled to come back to Council. Mr. Coleman said the issue regarding cost for residents with paved versus unpaved yards would require a lot of effort and prioritization needed to be considered. At this time, Mr. Coleman believed he would like Council to prioritize that matter against some of the other initiatives. This would determine if and when this would be accomplished. Mr. Markham thanked Mr. Coleman and stated Council would be willing to have a conversation regarding priorities; however, he stated Council said they would accomplish this a year ago.

Ms. Wallace said she did not remember the percentage increase projected as a result of the referendum; therefore, she thought it would behoove Council to share the fact the increase rate was lower than originally projected. While the rate increase was tied to the referendum, Ms. Wallace emphasized the amount was far less than originally projected, which Mr. Del Grande confirmed.

There was no public comment.



MOTION BY MR. MOREHEAD, SECONDED BY MR. HAMILTON: THAT COUNCIL APPROVE BILL 18-27, AN ORDINANCE AMENDING CHAPTER 25A, STORMWATER, CODE OF THE CITY OF NEWARK, DELAWARE, BY INCREASING THE STORMWATER FEE EFFECTIVE JANUARY 1, 2019.

MOTION PASSED. VOTE: 7 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Sierer, Wallace.  
Nay – 0.

**(ORDINANCE NO. 18-24)**

**20. 9-B. BILL 18-28 – AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, CODE OF THE CITY OF NEWARK, DELAWARE, BY ADDING STOP SIGNS ON HULLIHEN DRIVE, CHELTENHAM ROAD AND WILSON ROAD AT THE BRIAR LANE INTERSECTIONS**

---

**1:46:58**

Ms. Bensley read Bill 18-28 into the record by title and noted the Second Reading and Public Hearing in this matter was advertised in the Newark Post on November 30<sup>th</sup>, 2018.

Mr. Filasky announced Bill-18-28 was brought to him by a resident who requested a stop-sign at Hullihen Drive at Briar Lane. Observation of the surrounding area revealed there were stop signs and Cheltenham Road and Wilson Road; however, those stop signs were not in Code. In order to update the Code, Mr. Filasky wanted to bring all three requests for stop signs to Council at one time.

Ms. Sierer thanked Mr. Filasky and opened discussion to the table.

Mr. Morehead asked for clarification regarding whether it was the City's policy to put in stop signs at any t-intersection. Mr. Filasky confirmed it was not the City's priority to put in stop signs at every t-intersection in the City. Because Briar Lane was a major area and was a collector road for the neighborhood, Mr. Filasky said it made sense people expected Briar Lane to continue through and the t-street to stop. Mr. Morehead thanked Mr. Filasky for presenting this matter. While there were people who might be unhappy for the additional stop signs, he would deal with the issues and concerns.

Mr. Markham asked what measures would be taken to emphasize there were new stop signs and would they be followed up by enforcement. In the past when new stop signs were added, Mr. Markham said people still rolled through the stop signs and did not come to a complete stop. Mr. Filasky confirmed the new stop signs would be labeled and enforced. Additionally, the stop signs lead to a perpendicular road. Mr. Filasky expressed the NPD would be in charge of enforcement for the new stop signs. The new stop signs would consist of a bright neon yellow or blue that said, "new". He reiterated the stop signs at Cheltenham Road and Wilson Road were already in place; however, they were not in Code. Therefore, it was necessary to put the stop signs in that area in Code.

There was no public comment.

MOTION BY MR. MOREHEAD, SECONDED BY MR. HAMILTON: TO APPROVE BILL 18-28, AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, CODE OF THE CITY OF NEWARK, DELAWARE, BY ADDING STOP SIGNS ON HULLIHEN DRIVE, CHELTENHAM ROAD AND WILSON ROAD AT THE BRIAR LANE INTERSECTIONS.

MOTION PASSED. VOTE: 7 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Sierer, Wallace.  
Nay – 0.

**(ORDINANCE NO. 18-25)**

**22. 9-C. BILL 18-29 – AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, CODE OF THE CITY OF NEWARK, DELAWARE, BY CHANGING THE SPEED LIMIT ON SOUTH COLLEGE AVENUE**

---

**1:50:19**

Ms. Bensley read Bill 18-29 into the record by title and noted the Second Reading and Public Hearing in this matter was advertised in the Newark Post on November 30<sup>th</sup>, 2018.

Mr. Filasky informed the audience road work was underway in the area south of the bridge on South College Avenue. The speed limit sign which marked the change from 25 m.p.h. to 35 m.p.h. was

moved along with a telephone pole and other items. Mr. Filasky stated they needed a new place to put the sign and it made logical sense that the new road would be the breaking point for when the zone increased from 25 m.p.h. to 35 m.p.h. Additionally, South College Avenue widened to two lanes at that point.

Ms. Sierer thanked Mr. Filasky and opened discussion to the table.

Ms. Wallace asked for clarification regarding the reason behind the speed limit change. Mr. Filasky said he would let the NPD answer this question. Mr. Coleman asked Mr. Filasky approximately how far the stop sign moved. Mr. Filasky said the stop sign moved around 200 feet from its original position. Mr. Farrall addressed Ms. Wallace as the Deputy Police Chief and stated the primary reason for the change was to clean up the language in the Code. Originally, the Code did not specify where the speed limit changed in that area. Mr. Farrall expressed the language only stated, “at the railroad bridge”. Until recently, the sign was posted at the bottom of the bridge where the turn lane started for Old Mopar Drive near the bus station. The idea behind the change was to clean-up Code to note a good location that was well known; furthermore, the additions to STAR Campus and increased bicycle and pedestrian traffic merited the change. Mr. Farrall emphasized the area of Old Mopar Drive was a clean, recognizable location for this change. Ms. Wallace thought Old Mopar Drive made more sense to her than Inspiration Boulevard. DC Farrall thought the change at Inspiration Boulevard was in the works. Mr. Filasky confirmed this was the case and stated Mopar Drive technically did not exist since they rerouted it and moved it. Therefore, the area was known as Inspiration Boulevard. Mr. Filasky clarified Inspiration Boulevard was constructed on the University’s plans. Ms. Wallace asked if the existing Mopar Drive would become part of Inspiration Boulevard. Mr. Filasky confirmed this was the case. Mr. Filasky informed he and Mr. Coleman would work with the University and DeIDOT to ensure the area of Inspiration Boulevard was properly labeled and matched City Code. Ms. Wallace asked if the sign that was taken away was on Mopar Drive. Mr. Filasky said this was not the case as the sign was previously located at the bus stop.

Mr. Hamilton asked for clarification regarding the location of the red light in that area. Mr. Filasky stated the red light was located on Inspiration Boulevard. Mr. Hamilton asked if the area of Inspiration Boulevard (formerly Mopar Drive) was not officially named. Mr. Filasky clarified Mopar Drive passed in front of the Mopar Building. He expressed the Mopar Building was located in the area for many years prior to its demolition. What was originally known as Mopar no longer existed. Mr. Hamilton understood the old speed limit change over was located at the bus stop. He asked where the speed limit sign was located upon entering the City. Mr. Filasky said he was unsure if there was a speed limit sign posted in the area entering town. Mr. Farrall did not recall the exact location; however, the speed limit changed to 25 m.p.h. somewhere in the general vicinity. Mr. Hamilton asked if the speed limit sign changeover was being moved on both sides of the bridge. Mr. Farrall confirmed this was the case and reiterated both speed limit signs were being moved to a known point of the intersection.

Mr. Morehead asked if the speed limit sign was moved to the area just south of the bridge. Mr. Filasky confirmed this was the case. Mr. Morehead asked if Council could be provided with a map in situations where an unnamed road existed. Mr. Filasky confirmed this could be accomplished.

Ms. Sierer opened discussion to the public.

Amy Roe, District 4, was opposed to the proposal to change the speed limit on South College Avenue for several reasons. Currently, the speed limit for that street was 35 m.p.h. Additionally, there were no driveways or residential yards on the portion of the road that would warrant bringing the speed limit down to 25 m.p.h. Dr. Roe thought the City’s notice for the ordinance stated the change would be on South College Avenue, just north of Inspiration Boulevard. Over the past 35 years she lived in Newark, Dr. Roe said she never heard of Inspiration Boulevard. Dr. Roe described Inspiration Boulevard as some sort of mystery road. Moreover, she thought the description of Inspiration Boulevard this evening was stunning. She reiterated there was no road sign for Inspiration Boulevard on South College Avenue. Therefore, people were unable to look at the proposed ordinance and figure out where it was. Dr. Roe restated Inspiration Boulevard did not appear on any online (i.e. Google) or printed maps of the City at all. It was Dr. Roe’s observation Inspiration Boulevard did not appear on the City of Newark’s Street List which is located on the City’s website. Dr. Roe asked the following questions:

1. What exactly is Inspiration Boulevard;
2. Where is Inspiration Boulevard located, and
3. How far is the 25-m.p.h. speed limit going to extend.

Dr. Roe believed the public had no idea of these questions prior to attending tonight’s Council meeting and learning the explanation that was provided moments ago. She thought this was no way to

make an ordinance change. Dr. Roe said there was no justification for safety to reduce the speed limit on South College Avenue from 35 m.p.h. to 25 m.p.h. associated with the ordinance. She thought it was a terrible ordinance – not just for the reasons she just mentioned – but also because Dr. Roe believed it appeared as if the City was trying to change the speed limit as people descended from the bridge or approached it to create a new speed trap and write more speeding tickets. She asked Council to oppose this ordinance; therefore, if the ordinance came back, Dr. Roe requested for the road names to be marked on a map properly.

Meghan Mullennix, Student Government Association, spoke in favor of the speed change in the particular area around STAR Campus. She stated many students got around campus as pedestrians and said walking was her typical mode of transportation. Ms. Mullennix announced the area now had things for students on both sides of the streets; moreover, there was not a great method of crossing the street. Walking around campus and around the areas of Newark with lots of cars occasionally gave her anxiety. Finally, Ms. Mullennix thought the speed change – although it was not a big change – was in the best interest of the students.

Mr. Hamilton asked Mr. Bilodeau if the ordinance could be passed given that Inspiration Boulevard was not labeled on the map or if someone could argue the ordinance was unenforceable. As Mr. Bilodeau understood, Inspiration Boulevard did exist and was replacing Mopar Drive which originally was in Inspiration Boulevard's place. Mr. Bilodeau said the original draft of the ordinance had Mopar Drive listed until it was realized Mopar Drive was no longer in existence. Therefore, while Inspiration Boulevard might not appear on any maps or MapQuest, Mr. Bilodeau said the road did exist. Mr. Bilodeau clarified the road did exist; however, there was no street sign in place at the moment. Mr. Hamilton asked Mr. Bilodeau if the ordinance was enforceable as written. Mr. Bilodeau confirmed this was the case and stated the road existed although the road sign was missing. Mr. Coleman interjected and said Inspiration Boulevard appeared on NCC's mapping software. One of the complications with the roads internal to STAR Campus was due to the fact they were privately maintained; therefore, those roads were not considered public rights of way. Therefore, Mr. Coleman said the roads internal to STAR Campus were similar in nature to the road leading to Home Depot on Suburban Drive. The road leading to Home Depot was a private road and was called by different names.

Mr. Coleman mentioned Hootiecat Drive as it was a private street in Newark. While Hootiecat Drive had a sign, it did not exist on the City's street map. This was the case for Interchange Boulevard. Mr. Coleman said both Interchange Boulevard and Hootiecat Drive may or may not exist on Google Maps or sites of that nature. It was his expectation that – as soon as there was a building on it with an address that was addressed as Inspiration Boulevard – the road would show up quickly on Google Maps and other sites. He reiterated Inspiration Boulevard appeared on NCC maps. Mr. Hamilton asked if there were any members of NPD who could provide clarity as to where the City set-up speed radar units.

Ms. Bensley stated the Council District street list on the City website was for residential streets, so people could identify where they could vote. She clarified every street in the City would not be on that list. Mr. Hamilton said he observed NPD officers posted at the bus stop and stated the current speed limit sign was in that location.

Mr. Farrall noted the officers who were stationed at the bus stop utilized sophisticated equipment. NPD officers had the vehicle on radar as soon as it crossed over the crest of the hill. For this reason, the speed limit in that area was 25 m.p.h. Mr. Farrall clarified the speed limit in that area would not change and stated officers generally observed speeding cars at that location and caught them on the radar. He announced NPD had 71 police officers, with four officers assigned to the Traffic Unit. Mr. Farrall stated officers in the Traffic Unit conducted traffic enforcement all around Newark's 9.5 square mile radius. He emphasized the new speed limits and South College Avenue area would not become a speed trap issue. Mr. Farrall articulated the NPD was very busy and did not have time to set a speed trap in the area. He informed the audience the intent was to clean-up the signage for evenness and uniformity. Right now, as the ordinance was written, no one really knew where the speed limit changed. Mr. Farrall reiterated moving the speed limit signs as proposed would clearly delineate where the speed limit changes. On the north bound side of South College Avenue – even though the speed limit would be bumped back to Inspiration Boulevard to the area of the red light – the NPD officers would run radar for cars entering town on the north side of the bridge. Therefore, radar for cars entering the City would not be conducted on the south side of the bridge.

Mr. Hamilton questioned if the speed limit was enforced in this matter right now; therefore, moving the sign's location an extra 50 feet would not matter since the Traffic Unit was seated right before the area. DC Farrall clarified the officers were stationed after the bridge.

Based on the discussion, Ms. Wallace said it sounded like the proposed change was more enforceable because there was a fixed point. There would be more clarity if the sign was placed at Inspiration Boulevard as opposed to the Pennsylvania Railroad Bridge. Ms. Wallace believed the problem was due to the fact the speed limit signage was vague. Mr. Farrall confirmed this was the case. Ms. Wallace reiterated the proposed change was a fixed point and would not be vague. In the event signs would be knocked out by crashes or construction, Mr. Farrall said a fixed point would make it easier to tell people the exact location for the sign to be replaced. He reiterated it was important to provide an exact delineation of where the speed limit changes.

MOTION BY MS. WALLACE, SECONDED BY MR. CLIFTON: THAT COUNCIL ADOPT AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, CODE OF THE CITY OF NEWARK, DELAWARE, BY CHANGING THE SPEED LIMIT ON SOUTH COLLEGE AVENUE.

MOTION PASSED. VOTE: 6 to 1.

Aye – Clifton, Hamilton, Lawhorn, Morehead, Sierer, Wallace.

Nay – Markham.

**(ORDINANCE NO. 18-26)**

**23. 10. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:**

- A. Recommendation of the Special Use Permit of Caffé Gelato to Serve Alcoholic Beverages for 30 Days Due to Points Assessed by the NPD for Underage Drinking Violations at the Property Located at 90 East Main Street

**2:07:41**

Ms. Bensley read item 10-A into the record by title and noted the public hearing for this matter was advertised in the Newark Post on November 23<sup>rd</sup>, 2018 and required direct mail notices were sent on November 21<sup>st</sup>, 2018.

Ms. Gray stated Sgt. D’Elia was in attendance and would help answer questions on this matter. She expressed the recommendation was from City staff for Section 32-56.4(f)1b that Council consider a suspension of the Special Use Permit (SUP) for Caffé Gelato, located at 90 East Main Street, to sell alcohol for a period of 30 days. Recommendation of a suspension of a SUP to serve alcoholic beverages is reviewed under the procedures for a special use permit as defined in Section 32-78 of the City Code. Ms. Gray announced the process included a dually advertised hearing before Council; additionally, she and Sgt. D’Elia would present the staff report for Council this evening. According to the Zoning Code – in addition to fulfilling the applicable State requirements – establishments serving alcohol in the City of Newark must also meet the requirements of the City’s Zoning Ordinance as defined in Section 32-56.4 of the City Code. Section 32-56.4 was titled “Facilities Selling Alcoholic Beverages for Consumption on Premises and Restaurant Patios”. Ms. Gray informed the audience that Section 32-56.4 of the City Code included the application and granting of a SUP. Pursuant to the City Code, compliance with the SUP to serve alcohol is periodically reviewed by City Code staff and the NPD. In order to assist the enforcement of this Code provision, the City of Newark put together a guide to the City of Newark point system for SUPs. The guide was distributed to all the restaurants in the City of Newark that serve alcoholic beverages on a regular basis to ensure they are aware of the point system. Additionally, the guide included a point system whereby certain infractions result in an establishment being assessed points.

When an establishment is assessed points, the NPD notifies the business owner of the infraction and that continued violations could result in a revocation of their SUP. Ten points accrued over a twelve-month cycle results in a mandatory meeting with the business owner and the Special Use Permit Committee. The Special Use Permit Committee (SUPC) consisted of the NPD, City Solicitor and Planning staff. As indicated in an enclosed memorandum from the NPD dated December 6<sup>th</sup>, 2018 advised Ms. Sierer and Council of the fact Caffé Gelato obtained three violations within one year. The violations occurred on November 15<sup>th</sup>, 2017, January 26<sup>th</sup>, 2018, and September 21<sup>st</sup>, 2018.

Ms. Gray informed the audience the violations were given to Caffé Gelato for serving alcoholic beverages to persons under the age of twenty-one. According the NPD’s Point System Guide, each violation results in six points for an accumulation of eighteen points. Upon Caffé Gelato’s second violation on January 26<sup>th</sup>, 2018, they accumulated twelve points which resulted in a mandatory meeting with Ryan German, owner of Caffé Gelato, and members of the SUPC on February 15<sup>th</sup>, 2018. The members of the Special Use Permit Committee who attended were Mr. Bilodeau, Lt. Dennis Aniunas, Sgt. D’Elia, Ms. Gray and former Code Enforcement Manager Dave Culver.

At the meeting on February 15<sup>th</sup>, 2018, Mr. German indicated he recognized the problem of his employees not checking identification cards. Additionally, he said he would implement a system that would place the date of birth for twenty-one years old reminders at the counters as well as have managers train their staff to check identification cards to end underage alcohol sales at the restaurant. Further additional training for Mr. German's staff was offered. On April 20<sup>th</sup>, 2018 the Division of Alcohol and Tobacco Enforcement (DATE) and the NPD's Special Operations Unit (SOU) officers conducted a training session for employees at Caffé Gelato. The third violation – which resulted in the accumulation of eighteen points – occurred on September 21<sup>st</sup>, 2018 when another round of compliance checks were performed by the NPD's SOU and allied law enforcement agencies. Standard operation procedure for the SOU is to recheck the restaurants who previously failed on compliance at previous times. Ms. Gray reiterated Caffé Gelato failed their compliance check for the third time on September 21<sup>st</sup>, 2018. Sgt. D'Elia was on the scene and immediately contacted Mr. German to notify him of the compliance failure. As a result of this third incident, the SUPC met on October 19<sup>th</sup>, 2018 where all members who were present discussed how the sale of alcohol appears to be a systematic problem with Caffé Gelato. Additionally, committee determined the corrective measures of a mandatory meeting with the owner and a training session with Caffé Gelato's employees failed. Pursuant to the procedures as outlined in the City Code and Point System guide, staff recommended a 30-day suspension of the special use permit to serve alcohol.

The item was originally placed on the agenda for the November 26<sup>th</sup>, 2018 Council Meeting. Upon receipt of this notification, Mr. German and his legal counsel requested the item be postponed in order to discuss the issue. Per Mr. German's request, this item was removed from the November 26<sup>th</sup>, 2018 Council Agenda and placed on the agenda for December 10<sup>th</sup>, 2018. A meeting was held on November 27<sup>th</sup>, 2018 of the Special Use Permit Committee which included Lt. Aniunas, Sgt. D'Elia, Mr. Bilodeau, Ms. Gray, Mr. German and attorneys Bill Rhodunda and Ciro Poppiti.

The meeting on November 27<sup>th</sup>, 2018 discussed: (1) The infractions of September 21<sup>st</sup>, 2018, (2) The steps Mr. German was taking to ensure future compliance and (3) The December 10<sup>th</sup>, 2018 Council Meeting. Based on the information described in a memo from Planning Staff, dated December 3<sup>rd</sup>, 2018, Staff recommended that City Council suspend Caffé Gelato's SUP for 30-days pursuant to the SUP Point System Guide Policy.

Ms. Sierer thanked Ms. Gray and opened discussion to the table.

Mr. Markham thought the original intention of the SUP review was to deal with any establishment which had issues with alcohol consumption or excessive police response. He did not believe this was the case with Caffé Gelato; specifically, the issue was due to the fact Caffé Gelato's staff served alcohol to underage individuals without checking their identification. Sgt. D'Elia believed all the bars in Newark had problems with underage sales and stated the issue needed to be dealt with. Furthermore, Sgt. D'Elia clarified underage sales were included as part of the SUP and its original intent as well as the other problems that occurred at the restaurants. He informed Mr. Markham that NPD's compliance checks throughout the City are measures used to combat underage sales. Mr. Markham asked if there were additional complaints at Caffé Gelato. Sgt. D'Elia said Caffé Gelato had a history of previous and current complaints. Mr. Markham asked Sgt. D'Elia if the other complaints were listed in the NPD's memo (dated December 6<sup>th</sup>, 2018). Sgt. D'Elia stated the other complaints were not listed in the December 6<sup>th</sup> memo since they were recently uncovered as he prepared for tonight's Council meeting. Mr. Markham asked Ms. Sierer if she had any objections to hearing about the other complaints. Ms. Sierer was not opposed to being informed about the other complaints at Caffé Gelato. Mr. Bilodeau said the previous complaints were prior to the NPD's Point System. Sgt. D'Elia reiterated some of the complaints occurred prior to the establishment of the Point System whereas one complaint occurred after the last compliance check on September 21<sup>st</sup>, 2018.

Ms. Sierer asked for clarification regarding whether Council was allowed to hear about the complaint history for Caffé Gelato. Mr. Bilodeau advised Ms. Sierer and Sgt. D'Elia to limit discussion to any complaint since when the point system came into being on June 27<sup>th</sup>, 2016. Mr. Markham said there was a complaint that occurred after the compliance check on September 21<sup>st</sup>, 2018. Sgt. D'Elia clarified there were several complaints at Caffé Gelato [some of which did not assess points] since the September 21<sup>st</sup>, 2018 compliance check. Ms. Sierer expressed she would like to hear about the complaints. Mr. Markham agreed with Ms. Sierer as he believed Council should know the whole picture. Sgt. D'Elia reiterated the point system went into effect on June of 2016. He announced he took over the Special Operations Unit (SOU) in March of 2017 and they immediately started compliance checks at liquor stores in Newark. November 15<sup>th</sup>, 2017 marked SOU's first compliance checks of restaurants in Newark. Caffé Gelato was the last restaurant to be checked on that day; moreover, Caffé Gelato was the last restaurant to be checked because the operation ended prematurely. Sgt. D'Elia stated SOU checked multiple locations and five restaurants passed the check while five restaurants failed. He emphasized Caffé Gelato

was not the only restaurant that failed on November 15<sup>th</sup>, 2017. Every restaurant that failed were assessed six violation points each and were notified shortly after. The other complaint that arose on November 15<sup>th</sup>, 2017 occurred while Sgt. D'Elia stood outside with DATE officers and undercover NPD officers. At this time, NPD's undercover officer and the cooperating underage witness (CUW) were inside purchasing the alcohol which eventually assessed six points to Caffé Gelato. While this occurred, Sgt. D'Elia said he watched an off-the-clock employee which they found out later showed up at Caffé Gelato out of the alley who disclosed he was in the alley around the back of the restaurant. The individual caught Sgt. D'Elia's attention since he had a dog with him and they thought he might attempt to enter the front of restaurant with his dog. Mr. Bilodeau interjected and advised Sgt. D'Elia not to discuss this issue per a previous agreement with Mr. German's counsel.

Sgt. D'Elia asked Mr. Bilodeau if he was permitted to discuss a complaint that occurred on October 26<sup>th</sup>, 2018 after the compliance check on September 21, 2018. Mr. Bilodeau said Sgt. D'Elia was allowed to discuss the event. Sgt. D'Elia reiterated there were three compliance checks (November 15<sup>th</sup>, 2017, January 26<sup>th</sup>, 2018 and September 21<sup>st</sup>, 2018). Ultimately, there were many things that occurred in between meetings, education sessions and other measures set up to help Caffé Gelato succeed. Sgt. D'Elia said Mr. German's counsel requested research for any other issues that may have happened. While researching for tonight's Council meeting, he wanted to be prepared for questions from Council. During his research, Sgt. D'Elia found a University of Delaware (UDPD) police report which detailed a nineteen-year-old female who stated she worked at Caffé Gelato. The report described the subject as extremely intoxicated while in her dorm room on October 26<sup>th</sup>, 2018. Sgt. D'Elia reiterated the incident occurred only one month after the last compliance check and subsequent meetings. Because the incident occurred one month after the last compliance check, Sgt. D'Elia said they did not know about the incident in time to bring it up at the last meeting. Mr. Markham asked if the incident with the nineteen-year-old student could be tied directly to Caffé Gelato. Sgt. D'Elia confirmed the incident could be tied to Caffé Gelato and informed Mr. Markham the nineteen-year-old student expressed she was a server at Caffé Gelato and was intoxicated. The student was ultimately hospitalized and her statements to the University Police were that she was drinking at work and was provided with the alcohol by bartenders. Ms. Wallace asked for the date of the incident and Sgt. D'Elia reiterated it occurred on October 26<sup>th</sup>, 2018. Sgt. D'Elia believed the information provided reflected the time period from the implementation of the point system in 2016 through today.

Mr. Markham requested Mr. Bilodeau to discuss Council's position on this matter since he believed Council was a judicial body as opposed to legislative body at the moment; moreover, he thought Council presided as a court in this matter. Mr. Bilodeau said he would attempt to keep things relevant and would speak up if something was out of order. He described Council as a judicial body and advised Mr. Markham he would make Council aware of the required standards on which to base their vote in support or opposition. Mr. Bilodeau said the standards were similar to the ones used when voting to approve a SUP. Mr. Markham questioned if the owner understood the gravity of the situation at the meeting. Sgt. D'Elia asked Mr. Markham to clarify which meeting he referred to. Sgt. D'Elia reiterated he met with Mr. German on three occasions. The first compliance failure on November 15, 2017 was discussed over the phone and in-person. Sgt. D'Elia stated Mr. German was on-site when the second compliance failure occurred on January 26<sup>th</sup>, 2018 which prompted a mandatory meeting on February 15<sup>th</sup>, 2018. Sgt. D'Elia believed Mr. German fully understood the gravity of the situation and reiterated there was a training session for his employees with officers from the NPD and DATE. Sgt. D'Elia emphasized Mr. German was made aware by the SUPC at the meeting on February 15<sup>th</sup>, 2018 regarding what would if there were any additional failures of compliance or any types of violations. If there were any further compliance failures which resulted in assessed points, Mr. German was aware they would be required to come before Council. Mr. Markham said there did not appear to be any ambiguity and Sgt. D'Elia confirmed this was the case. Sgt. D'Elia said the SUPC and NPD were interested in working with Caffé Gelato at that point to try to fix the problem; moreover, he expressed they were still committed to this endeavor.

Mr. Markham questioned if all the occurrences happened at the bar or if any occurred with the table service. When NPD sends in a Cooperating Underage Witness (CUW) as well as the undercover officers along with them, they did not send anyone to a table service because of the cost and time involved. He reiterated NPD checked ten to twelve restaurants; therefore, the cost of ordering food and drinks with table service was not practical. For these reasons, Sgt. D'Elia reiterated compliance checks were conducted at bars as opposed to table service. Sgt. D'Elia said in at least two of these cases, the person behind the bar was someone who provided the same service at the tables. He reiterated Caffé Gelato's three compliance failures occurred at the bar. Mr. Markham said he wanted to stick to facts as opposed to assumptions or opinions. He was disappointed this matter came before Council tonight as he believed Caffé Gelato was the last organization he expected to see violate the terms of compliance. Sgt. D'Elia agreed with Mr. Markham and said the NPD expressed the same sentiment to Mr. German.

Mr. Clifton said the point system was put in place a couple years ago; however, he thought it needed to be clear that the SUP for alcohol service has been in place since 2001. Sgt. D'Elia confirmed the SUP for alcohol service had been in place since 2001. Mr. Clifton stated the SUP had been around for seventeen years and the City operated under City Code for determining alcohol services. He stated for the record the SUP was put in the Code because there was an establishment that overserved a person which ultimately led to an accident on Pleasant Valley Road. At the time, the accident was the worst accident on Delaware highways; moreover, five people were killed including four children. Mr. Clifton reiterated the SUP was not new; however, the point system was a more recent development. He believed the operation was a three-tier operation which included the State of Delaware. Sgt. D'Elia reiterated each of the operations for Caffé Gelato included the following agencies:

1. NPD and the DATE;
2. NPD, DATE and UDPD, &
3. NPD, DATE and UDPD.

Mr. Clifton questioned if the Cooperating Underage Witnesses (CUW) looked like they were 21 years of age or older. Sgt. D'Elia informed Mr. Clifton CUWs were between the ages of eighteen and twenty who looked younger than 21. On the same night as the last compliance check on September 21<sup>st</sup>, 2018, Sgt. D'Elia said another restaurant told him two young looking females entered their establishment. When the restaurant determined the girls were underage, they immediately sent them on their way. Because of these reasons, Sgt. D'Elia reiterated they selected people as CUWs that looked younger to make it obvious to the bartender or server they needed to check their identification before allowing them to drink alcohol. Mr. Clifton thought it was reasonable to say the CUWs were clearly underage (i.e. males with no facial hair or other features). Sgt. D'Elia confirmed this was the case and expressed female CUWs were advised to not wear heavy makeup or dress like they were going out to a night club; moreover, CUWs were instructed to avoid hairstyles or clothing that made them appear older. Sgt. D'Elia reiterated men were not allowed to have facial hair (i.e. beard, mustache) and be clean shaven while operating as CUWs. Additionally, NPD took photos of the CUWs beforehand for reference and added they dressed in casual attire such as jeans and t-shirts. Mr. Clifton asked if Mr. German's counsel would be given the opportunity to speak. Mr. Bilodeau and Ms. Sierer confirmed Mr. German's counsel would be permitted to speak. Mr. Clifton said he would ask additional questions after hearing from Mr. German and his counsel.

Mr. Lawhorn expressed he would share his thoughts on the matter after everyone had a chance to speak. He questioned if there was any possibility the compliance checks were conducted unfairly or if there were circumstances that would have been viewed as unfair. Sgt. D'Elia emphasized the compliance checks were properly administered without unfairness or bias. He reiterated the compliance checks that were administered on November 15<sup>th</sup>, 2017 in which half the restaurants passed. NPD administered compliance checks to fourteen restaurants in Newark on January 26<sup>th</sup>, 2018. Additionally, Caffé Gelato was the only establishment that failed a recheck on that night and only two establishments which were not rechecks failed as well. Sgt. D'Elia emphasized the majority of restaurants passed the compliance checks. On the last round of compliance checks on September 21<sup>st</sup>, 2018, five restaurants failed and three passed. The majority of times – if failure occurred with a six-point assessment – the police would have a conversation with the owner and the incident would not repeat itself. Sgt. D'Elia reiterated most restaurants never received second violations because they took appropriate corrective action after the first incident. Sgt. D'Elia informed Mr. Lawhorn there had only been three mandatory meetings that resulted in NPD and the SUPC making a recommendation to Council or other corrective measures.

Mr. Lawhorn asked for clarification regarding the process; specifically, if the young looking CUW was tasked with going up to the bar and asking for a drink. Additionally, he questioned if there were plain-clothed police officers in the area. Sgt. D'Elia said the CUW was provided with a marked \$10 or \$20 bill. CUWs would be sent in pairs or as individuals. When CUWs were sent in individually, Sgt. D'Elia described it as a red flag and would appear more egregious if the individual was not carded. He described the process as follows:

1. First, different combinations of CUWs would be sent in as well as individuals. Two females could go in as a pair as well as a male and female;
2. The CUWs would go into the restaurant – either before or after the undercover police officers – so they did not appear to be working with the police. Sgt. D'Elia announced it was clear the undercover officers would look older than 21 years of age and the CUWs in the restaurant;
3. The undercover officers would sit in the restaurant that was far away from the CUWs; however, they still were able to easily observe their interactions the entire time. Typically, undercover officers would sit at the opposite end of the bar or would hang out in the area where the hostess was located. Since Caffé Gelato had large windows out front, undercover officers were able to clearly see everything from the street.

4. The CUWs would ask to purchase alcohol.

Sgt. D’Elia stated the CUWs were required to be truthful when they were questioned about their age. He referenced the September 21<sup>st</sup>, 2018 compliance check where CUWs were questioned about their age. The CUWs were asked to leave most establishments when they stated they were nineteen years old. Furthermore, CUWs provided their true personal identification if it was requested. When the server or bartender checked the CUWs identification card, they would in theory send them on their way. Mr. Lawhorn asked if Caffé Gelato’s staff asked the CUWs for their identification during the three compliance checks. Sgt. D’Elia informed Mr. Lawhorn Caffé Gelato’s staff failed to ask the CUWs for their identification for all three compliance checks.

Mr. Morehead said it was his understanding the City had one SUP for all of the businesses’ components. He stated the Planning Commission’s report dated December 3<sup>rd</sup>, 2018 mentioned Caffé Gelato’s bar, restaurant and catering component were covered by a single SUP. Ms. Gray confirmed this was the case pursuant to Section 32-56.4 of the Municipal Code for serving alcohol. Mr. Morehead asked if there was a separate SUP for the bar area. Ms. Gray confirmed there was not a separate SUP for the bar. Mr. Morehead thought in the case of four SUP violations the State had the authority to pull the license to sell alcohol for a significant amount of time. Mr. Bilodeau said it was his understanding that Caffé Gelato was advised they would lose their State liquor license if another violation occurred. Mr. Morehead questioned the time frame associated with the State’s revocation of a liquor license. Sgt. D’Elia clarified four offences within a five-year period of time could result in the revocation of a liquor license. Mr. Morehead asked if the license would be pulled permanently or temporarily and Sgt. D’Elia said it was the Commissioner’s decision. Mr. Morehead believed serious offences under State Law would result in the permanent removal of a liquor license based on four offences. Sgt. D’Elia confirmed this was the case. Mr. Morehead believed Caffé Gelato had three offences and thought the nineteen-year-old who was hospitalized on the October 26<sup>th</sup>, 2018 incident would not count since it was anecdotal. Sgt. D’Elia said he was unsure if the October 26<sup>th</sup>, 2018 incident would launch another investigation. He informed Mr. Morehead the DATE would investigate this incident as it was under their jurisdiction since it involved a server at the restaurant. Sgt. D’Elia said he spoke to a supervisor on the DATE and thought it was a possibility they would continue with an investigation.

Mr. Hamilton questioned if NPD conducted other investigations at Caffé Gelato. Sgt. D’Elia asked Mr. Hamilton if his question referred to the time period since the point system went into effect. Mr. Hamilton confirmed this was his question. Sgt. D’Elia stated NPD only conducted three investigations at Caffé Gelato since the point system went into effect on the three specific dates (November 15<sup>th</sup>, 2017, January 26<sup>th</sup>, 2018, & September 21<sup>st</sup>, 2018). He emphasized there was no past history of complaints with Caffé Gelato and reiterated the only issues were in reference to the establishment’s three failures. Mr. Hamilton asked for clarification regarding how many servers were involved in the incidents. Sgt. D’Elia announced there were three different servers that did not ask for identification on the three occasions.

Council recessed for a five-minute break and the meeting resumed at 9:40 p.m.

As a point of order, Ms. Sierer asked Mr. Bilodeau to provide clarification for the public regarding the grandfathering of restaurants on Main Street. Mr. Bilodeau reiterated the SUPs had been around since 2001. There were three restaurants/bars that were grandfathered which existed before 2001; therefore, they were not required to obtain a SUP. Mr. Bilodeau said Deer Park, Klondike Kate’s and Grain were grandfathered and were not required to obtain a SUP. Ms. Sierer asked Mr. Bilodeau to provide additional clarification on Grain. Mr. Bilodeau informed SUPs were valid for a year if a restaurant ceased to exist as a business. If a new bar or restaurant took its place within a year, the new establishment would inherit the former restaurant or bar’s SUP. Sgt. D’Elia expressed if the restaurant was empty and not occupied by anyone, the new restaurant would be required to obtain a new SUP. Grain moved in to the restaurant within 365 days; therefore, they inherited the previous establishment’s SUP.

Ms. Sierer said Deer Park, Klondike Kate’s and Grain were required to comply with State regulations with regards to alcohol. Sgt. D’Elia confirmed this was the case and informed the audience compliance checks were still performed at those locations. Ms. Sierer believed compliance checks at Deer Park, Klondike Kate’s and Grain were conducted just as frequently – if not more frequently – than at the other restaurants.

Since there were no additional comments from the table at this time, Ms. Sierer asked Mr. German and his legal counsel to come forward.

William Rhodunda, Jr., announced he was the attorney retained to represent Caffé Gelato and its owner, Ryan German. Ciro Poppiti was the co-counsel in this matter and would make a short presentation



this evening. Mr. Rhodunda thanked Ms. Sierer and Council for providing the opportunity to appear at the meeting and emphasized the importance of the matter at hand. There were severe potential consequences for both Caffé Gelato, its owners and employees. Before going into the facts, Mr. Rhodunda announced there were some legal issues that needed to be discussed. Mr. Rhodunda said the original focus of his comments was to clarify a positive path forward. He stated it was evident Mr. German understood there was an issue that needed to be corrected. Additionally, Mr. German and counsel proposed ways to deal with this issue. Due to what transpired and things that happened this evening, Mr. Rhodunda reiterated he needed to present legal issues for the record.

Mr. Rhodunda said the first legal issue arose from the fact the report presented to Council for the meeting was different from the one they originally received. According to Mr. Rhodunda, there were items in the original report for which no violations were ever given to Mr. German. Mr. Rhodunda demanded the violations be stricken from the record because people needed to be aware of a violation and offered the ability to contest it. Since Mr. German and counsel were not provided with the knowledge of these violations or the ability to contest them, Mr. Rhodunda did not think it was fair and breached an agreement. Mr. Rhodunda said there was an explicit agreement between himself and the City which only permitted charged offenses to come before City Council. He reiterated some of the violations were completely out of the blue and without prior information provided ahead of time. Mr. Rhodunda claimed they were not presented with the information regarding the October 26<sup>th</sup>, 2018 incident and could not substantiate whether it was true or false. He stated it was “highly inappropriate” to bring the October 26<sup>th</sup>, 2018 incident before Council without alerting himself, Mr. Poppiti and Mr. German. Mr. Rhodunda said the issue before Council related to three issues on three specific dates; furthermore, nothing else should be considered. He described the initial police report that was redacted prior to tonight’s meeting as seriously flawed. Furthermore, Mr. Rhodunda reiterated they had no prior knowledge of the incident on October 26<sup>th</sup>, 2018 until Sgt. D’Elia’s testimony at the Council meeting. Although the intention was to move forward, Mr. Rhodunda said there were some procedural errors that already occurred which he believed tainted the hearing. Although the original police report was redacted, Mr. Rhodunda thought it was seriously flawed.

Mr. Rhodunda thought the Planning Director’s report was not compliant with the ordinance; specifically, the ordinance gave specific provisions as to what needed to be included in the report. He referenced an exhibit package that was given to Council at the dais. Exhibit G specifically states what should be in the report provided to Council. One of the items that was supposed to be included was any information available from the Delaware Alcoholic Beverage Control Commission (DABCC). Mr. Rhodunda said he wished to question Ms. Gray on the information from the DABCC and substance of the Planning Department’s report if permitted. Ms. Sierer and Mr. Bilodeau told Mr. Rhodunda he was allowed to question Ms. Gray. Ms. Gray said Mr. Rhodunda’s question referred to the criteria mentioned in Section 32-56.4(f)1b of the City Code which indicated the standard of review for compliance with SUP’s for restaurants serving alcohol. Ms. Gray’s interpretation of this provision was the intent was not to mark off every single item on the list; however, there were certain items on the list that triggered review (i.e. the Point System) warranted their presentation before Council. Mr. Rhodunda thanked Ms. Gray for this information and stated he had another question. Mr. Bilodeau interjected and clarified the word “shall” was not included in the language of Section 32-56.4 (f)1b.

According to Mr. Bilodeau, one of the criteria in Section 32-56.4 (f)1b referred to an evaluation by the Building Department. Therefore, Mr. Rhodunda’s argument would require an individual from the Building Department discuss flaws in the building as well. Mr. Bilodeau emphasized the City did not need all four criteria; furthermore, criteria was all that was needed. Mr. Rhodunda respectfully disagreed with Mr. Bilodeau as he thought the Building Department was not required to be involved since he thought it was solely an alcohol related issue. He stated the review criteria specifically defines, “any available information from the DABCC.” Mr. Rhodunda asked Ms. Gray if she contacted the DABCC before she wrote her report. Ms. Gray said she did not contact the DABCC prior to writing the report and confirmed with NPD regarding their report and interaction with DATE. Mr. Rhodunda questioned if Ms. Gray agreed with him regarding the statute’s language that said, “the report shall include information from DABCC.” Ms. Gray expressed she followed Mr. Bilodeau’s interpretation of the statute in that every single item on the list did not have to be ticked off in order to trigger a review. She believed the NPD’s evaluation was sufficient as it related to the point system. Mr. Rhodunda said he, Messrs. Poppiti and German and Ms. Gray met to discuss the facts surrounding these incidents. Ms. Gray confirmed this. Mr. Rhodunda questioned why Ms. Gray did not include any of the facts they gave her in her report. He described the facts they provided as different than what was presented to Council. Ms. Gray asked for clarification regarding the facts Mr. Rhodunda was referring to. She said the Planning Department’s report focused on the review criteria; moreover, according to the point system and three infractions that occurred. The three infractions accumulated the points that occurred according to the point system.

Ms. Gray said the meeting that occurred was provided at Mr. Rhodunda's request. Mr. Bilodeau asked Ms. Gray which meeting she was referring to. Ms. Gray said she was speaking in reference to the meeting on November 27<sup>th</sup>, 2018 which resulted from a request from Messrs. German, Rhodunda and Poppiti to discuss the procedure for the SUP process. Mr. Rhodunda reiterated his question to Ms. Gray regarding whether she thought the facts around what transpired on these occasions were relevant to her recommendation. According to Ms. Gray what relevant to her recommendation was the three infractions that incurred for the sale of alcohol to minors pursuant to the City Code. Mr. Rhodunda acknowledged he understood the Code provisions. Regarding the second infraction where the employee who served alcohol to a minor was a criminal who then took the \$20 from the minor, stuck it in his back pocket and stole the money. Ms. Gray confirmed she was aware of this incident and that it was described at the meeting on November 27<sup>th</sup>. Mr. Rhodunda said the City appeared to be holding the restaurant responsible because of the actions of one of its employees. He did not understand why Caffé Gelato would be held responsible for an individual who blatantly disregarded the law and stole money from customers. Furthermore, Mr. Rhodunda believed it was ridiculous to think the same employee would comply with carding requirements; specifically, when this employee ended up taking the police's money. He asked Ms. Gray if the stolen money ended up in the employee's back pocket. Ms. Gray informed Mr. Rhodunda she relied on the report from Sgt. D'Elia and his team regarding the enforcement activity that occurred.

Mr. Rhodunda reiterated Council was just provided with information about a bartender at Caffé Gelato who stole money from the police and was fired immediately thereafter and was involved with one of the incidents. Mr. Rhodunda asked if Council was made aware of this information beforehand. Ms. Gray expressed Council received the information that was included in her report. Regarding the third incident, Mr. Rhodunda asked if it was true that – when the undercover officers went in Caffé Gelato with the two CUWs – staff actually carded the two undercover officers who entered the restaurant. Mr. Bilodeau suggested Mr. Rhodunda ask Sgt. D'Elia for the specifics of the police investigation since he was there when it occurred. Mr. Rhodunda addressed Sgt. D'Elia and asked if he heard his explanation regarding the second incident where the bartender was actually a thief who served the minors; additionally, he took the \$20 bill that NPD had given the CUWs and put it in his back pocket. Sgt. D'Elia confirmed this was the case and the information stated was accurate. Mr. Rhodunda asked Sgt. D'Elia if Caffé Gelato was cited for serving a minor even though the circumstances were present. Sgt. D'Elia clarified he cited all three of the people who committed crimes on each one of the occurrences. Mr. Rhodunda questioned Sgt. D'Elia if he was aware the employee for the second incident was terminated immediately thereafter. Sgt. D'Elia said he was aware of this fact.

Mr. Rhodunda asked Sgt. D'Elia if he believed Caffé Gelato should receive a six-point violation because an employee who acted on his own [stealing money and also acting inappropriately] should be imputed on the employer. He emphasized the employer would have no control over someone who was a thief. Sgt. D'Elia asked Mr. Rhodunda if he was asking for his personal opinion in this matter and Mr. Rhodunda asked if it was fair for Council to penalize the restaurant because a rogue employee who stole money and was in clear violation of the law. Mr. Bilodeau told Sgt. D'Elia he did not have to answer this question. For the second incident, Mr. Rhodunda asked Sgt. D'Elia if he agreed the bartender was fired thereafter because he stole money from the CUWs that was found in his back pocket. Sgt. D'Elia confirmed the informant's money was in the employee's back pocket and the owner told him later that he was fired. Mr. Rhodunda said NPD conducted a joint investigation for the third incident and asked if it was true that two undercover officers who went into the restaurant were actually carded by the bartender. Sgt. D'Elia clarified the undercover officers were carded by a different bartender. Mr. Rhodunda reiterated the explanation there was a bartender who was working the bar who carded everyone at the bar. When the bartender left to use the restroom, another individual stepped in while he was away and believed all patrons were carded by the previous bartender. Mr. Rhodunda said the individual who filled in at the bar for the bartender was under the impression the patrons had already been carded; therefore, he served the informants (CUWs) alcohol. Sgt. D'Elia expressed he heard the explanation; however, it was not what he expected someone to do nor was it the legal obligation of someone selling alcohol.

Mr. Rhodunda restated his question to Sgt. D'Elia as to whether he agreed a bartender properly carded the two undercover officers. Sgt. D'Elia reiterated a different bartender carded two female undercover officers at the opposite end of the bar. Mr. Rhodunda asked how old the undercover female officers were. Sgt. D'Elia informed Mr. Rhodunda the female undercover officers were in their late twenties. Mr. Rhodunda asked if the female officers were carded by the bartender. Sgt. D'Elia reiterated the two female undercover officers were carded by a different bartender; furthermore, he told Mr. Rhodunda he indicated they were carded each time he asked. Mr. Rhodunda believed the undercover female officers were carded roughly around the same time the minors were served alcohol by someone who stepped in for another bartender. Sgt. D'Elia said the underage individuals were provided alcohol within five minutes of the service.

Mr. Rhodunda believed the Planning Department's report was not in accordance with the City Ordinance. He described this as the first issue of concern in this matter. Furthermore, he mentioned the Planning Director's indication of no contact with the State (DABCC) seemed to be in contradiction of the statute passed by Council; specifically, since the matter at hand required contact with the Commissioner because alcohol was involved. Mr. Rhodunda referenced exhibit (g) which said, "there shall be contact with the Commissioner's office." He believed the report was defective on its face and should not be considered.

According to Mr. Rhodunda, due process was the second issue in this matter. Due process requires both sides get a chance to be heard. Mr. Rhodunda believed Council and staff acted surprised when they heard Sgt. D'Elia's testimony regarding how individuals could simply walk up to the bar and get served. Mr. Rhodunda said this was not the case; furthermore, he purported the information regarding the circumstances were explained to NPD and the Planning Department and failed to make it into the report. Mr. Rhodunda said the circumstances he questioned Sgt. D'Elia about were explained; however, it was his opinion the NPD did not provide the information to Council even though they agreed with the facts Mr. Rhodunda et. al presented. He reiterated due processes required some step somewhere where they had chance to defend the case before it was presented to Council. Otherwise, Mr. Rhodunda expressed they were left with trying to defend actions. He believed the issue of a rogue employee who stole from the company that happened to pocket the money would not be intent on carding people. Furthermore, the individual's intent was to steal money. Mr. Rhodunda did not think it was warranted for the City to hold the rogue employee's actions against the restaurant owner, Mr. German. Mr. Rhodunda said the information provided tonight was given before he was able to present their case.

Another issue related to due process was related to the incident on October 26th, 2018; specifically, Mr. Rhodunda claimed to have no knowledge of the incident before tonight. He requested the incident on October 26<sup>th</sup>, 2018 not be considered with Council's decision. Mr. Rhodunda reiterated they did not receive information about this incident prior to the meeting and were therefore unable to address it.

Finally, Mr. Rhodunda said he requested information from DABCC Commissioner who sent information by email earlier today; moreover, he thought Mr. Bilodeau might have received it as well. Mr. Rhodunda reached out to the commissioner in reference to the specific details of the situation and if the DABCC had been contacted by the City. John Cordrey, Commissioner of the DABCC, indicated in an email that he had not been contacted by the City which Mr. Rhodunda said was in violation of the statute. Additionally, Mr. Cordrey informed Mr. Rhodunda the enactment of the ordinance itself was unconstitutional in his opinion. Mr. Rhodunda said he personally did not believe the enactment of the ordinance was unconstitutional. However, Mr. Cordrey believed the City's SUP related to alcohol use only provided a constitutional issue; specifically, in regard to enforcing such a statute at a local level when the State had authority over alcohol licenses and all related issues. Mr. Rhodunda referenced *Prices Corner Liquors, Inc. v. Delaware Alcoholic Beverage Control Commission* which said the State has final and full authority over alcohol related issues. See *Prices Corner Liquors, Inc. v. Delaware Alcoholic Beverage Control Commission*, 705 A.2d 571 (Del. 1998). Mr. Rhodunda reiterated Mr. Cordrey's personal opinion on this matter that he believed the City's ordinance was unconstitutional.

Before going into the legal issues and questioning the witnesses, Mr. Rhodunda said the goal was to try to come up with a positive path forward that is good for the City, Caffé Gelato, and Caffé Gelato's employees. Mr. Rhodunda described Caffé Gelato as a restaurant and said it was not a bar. While he had not personally been to Caffé Gelato in a long time, he went there on Saturday night (December 8<sup>th</sup>). Mr. Rhodunda described Caffé Gelato as a place where people in their 30s, 40s, and 50s go with their families and friends to have dinner and wine. He reiterated the restaurant was not a bar. Mr. Rhodunda said he was aware the City of Newark had one type of zoning used as a catch-all for restaurants, bars and taverns, he believed Caffé Gelato needed to be looked at differently. When he left Caffé Gelato at Saturday night (December 8<sup>th</sup>) at 9:30 p.m., Mr. Rhodunda said there were [maybe] two or three tables full of people which he thought were minimal. The people who were at those tables had been there for hours; additionally, Mr. Rhodunda expressed he did not tell Mr. German he was going to the restaurant. He informed the audience he wanted to attend Caffé Gelato unfiltered as to what occurred there. Mr. Rhodunda emphasized Caffé Gelato was basically empty when he left around 9:30 p.m. or 10:00 p.m. on that particular night. When he drove down Main Street to leave Newark, Mr. Rhodunda said Grotto's was completely crowded with people who appeared to be the age who needed to be strictly scrutinized. He reiterated Caffé Gelato was emptying out and the only college age individuals in the restaurant were employees. Mr. Rhodunda said Caffé Gelato had been focused on dining since its very inception and had a good reputation for eighteen years as being good citizens in the City of Newark.

Mr. Rhodunda believed the standard of review used in the City of Newark statute did not seem appropriate. The standard of review talked about whether the issue in question was a use that was a positive or did it threaten the community. Mr. Rhodunda thought Caffé Gelato was a very positive business and had been for many years. Caffé Gelato had 40-50 full-time employees and 30 part-time employees. Additionally, the business was tremendously involved in the community with the donation of goods, services, food and money to multiple organizations. Mr. Rhodunda believed many people talked about community service whereas Caffé Gelato exemplified service. He described Caffé Gelato as the type of citizen which Newark needed to promote. While Mr. Rhodunda was not saying Caffé Gelato did not need to improve on their carding process, he asked Council to consider the circumstances. Based on the statute and the standard of review, he believed it was important to look at the full picture of what Caffé Gelato was all about. Mr. Rhodunda referenced exhibit (b) which contained letters in support from fifteen people who spoke very highly of Caffé Gelato and Mr. German; furthermore, the letters opposed the City's suspension of the liquor license for 30 days. Mr. Rhodunda said the statute did not require any suspension of Caffé Gelato's liquor license. He explained there was a proposal to suspend the bar license because the issue seemed to be with Caffé Gelato's bar as opposed to the restaurant section. Mr. Rhodunda reiterated the statute did not require Council to impose any suspension. Mr. Rhodunda thought the letters of support were very powerful and did not simply state, "I like Ryan, he's my friend. Don't penalize him." The letters were thoughtful and deep letters which he believed were sent to various members of Council and Ms. Sierer. Mr. Rhodunda hoped everyone would be given the chance to read the letters; otherwise, he suggested a recess to read the letters before voting on the matter. He reiterated his belief it was important to see what the letters had to say.

Mr. Rhodunda read some of the key points from the letters of support into the record:

1. "It's a restaurant, not a bar.";
2. "It's the pride of Main Street.";
3. "It has long represented the kind of restaurant we want in Newark.", and
4. "Ryan's excellent reputation for hard work and integrity."

Mr. Rhodunda read a letter from Mark Powers which said, "His character is demonstrated by his [Mr. German's] love for Newark and support for this community." He said the issue before Council tonight regarded the improvement of carding. Regarding the City's statute, the matter that needed to be considered was whether Caffé Gelato was a positive entity and should be supported. It was Mr. Rhodunda's belief – based on the content of the support letters and an eighteen-year positive track record – that Caffé Gelato is the type of business that should be supported. He reiterated there was no requirement to impose a suspension on Caffé Gelato; therefore, Mr. Rhodunda asked for a lesser penalty. When Mr. Rhodunda asked the Planning Department and NPD if they considered Caffé Gelato to be a problem business in Newark, the answer was "no". He did not believe Caffé Gelato was a problem business; however, there was an issue with carding that needed to be checked and corrected. Mr. Rhodunda believed there were provisions to deal with that issue and reiterated the NPD said Caffé Gelato was not a problem restaurant. If Caffé Gelato was not a problem restaurant, Mr. Rhodunda believed it should not be essentially closed down for 30 days as it would be financially devastating for his client.

Included in his letter to Council, Mr. Rhodunda said he included proposed sanctions and were included as part of exhibit (a) that was presented to Council. The first sanction would be from January 2<sup>nd</sup> to 16<sup>th</sup>, 2019 (a fifteen-day period) where the bar area of the restaurant shall be closed to patrons. Patrons would be required to sit and order food at a table in order to be served.

The second proposed sanction was that signage shall be posted on the bar area, clearly notifying customers the bar was closed.

Mr. Rhodunda said the third proposed sanction from January 2<sup>nd</sup> to 16<sup>th</sup>, 2019 (a fifteen-day period) would be the restaurant would not serve alcohol after than 10:00 p.m. He believed this time period would be helpful since the intent was to demonstrate and emphasize the business was a restaurant as opposed to a bar. Mr. Rhodunda reiterated the bar area was the creator of most problems where questionable activity took place later on in the evening.

There was a fourth proposed sanction that was already implemented; specifically, the utilization of software to ensure no minors could be served alcohol by entering the patrons' date of birth into a computer. Mr. Rhodunda said the software had already been implemented and announced his client was very serious about addressing the issues at hand.

Finally, Mr. Rhodunda announced the fifth proposed sanction. Beginning in January 2019 and continuing every other month thereafter, training would be conducted by a Delaware lawyer who

practices in alcohol law. Mr. Rhodunda believed this was an important follow-up measure and reiterated his client was very discouraged by the situation he was in. Mr. German also was discouraged to come before Council and was very upset and embarrassed. Mr. Rhodunda reiterated his client's desire to address the issue and wanted to walk away from the meeting with a path forward that made sense. He said the proposed five sanctions were what they hoped Council would impose which would ensure there would be no underage drinking at Caffé Gelato. Mr. Rhodunda said he only saw one underage person at Caffé Gelato when he had dinner there on December 8<sup>th</sup>.

Mr. Rhodunda referenced a letter he sent to Council and wanted to mention by name some of the organizations in the community who supported Caffé Gelato. Since the standard of review was if the entity was negative or damaged the community, he believed it was important to highlight Caffé Gelato was a positive influence. Mr. Rhodunda did not think it was possible to view Caffé Gelato as a negative entity. Caffé Gelato hosted an annual fundraiser and running race for the Friendship House for the past ten years. \$45,000 was raised for the Friendship House from the fundraiser. Newark Day Nursery, Newark Arts Alliance, Newark Symphony Orchestra, Newark Morning Rotary, American Cancer Society, National M.S. Society, Boys and Girls Clubs of Delaware, Girl Scouts of America, Preston's March for Energy, Leukemia and Lymphoma Society, Kids With Confidence, Pike Creek Running Club, Delaware Special Olympics, Delaware Rugby Foundation and the Newark Police Department K-9 Unit were all organizations that received donations from Caffé Gelato.

Mr. Rhodunda said Caffé Gelato was not the type of entity that needed to be shut down; furthermore, it was the type of entity that needed to be embraced. He reiterated guidelines would be put in place so there would not be another violation. While Caffé Gelato still would face the State matter for this situation and believed the loss of a liquor license would be the end of the business. Mr. Rhodunda reiterated Mr. German would take every step possible to fix the problem.

Ryan German, owner of Caffé Gelato, apologized to Council for having to appear at the meeting tonight and failing to pass the compliance checks. He stated it had been his intention to follow the law completely and reiterated his embarrassment due to failing compliance checks. Mr. German said he frequently heard servers carding guests and even carded those who were in their 30s. He was surprised that his staff served alcohol to underage consumers. On November 15<sup>th</sup>, 2017, Mr. German said they recently hired a woman who graduated from college and worked mostly with the business in catering, deliveries, and outside events. On occasion, she would bus tables in the restaurant. On November 15<sup>th</sup>, the individual was bussing tables in the restaurant when she saw someone at the bar without service. She went over to the individual and asked if she could help her. Ultimately, the employee ended up serving a CUW and was arrested. Mr. German felt terrible the employee was arrested and said she was now a full-time teacher and worked for Caffé Gelato once a week. He felt bad for the situation and believed it was partially his responsibility since he did not get a chance to talk to her about alcohol service; specifically, that only bartenders or servers should serve alcohol and needed to be certified. After the incident on November 15<sup>th</sup>, 2017, Mr. German said all staff regardless of their function took the alcohol certification. It was reiterated only servers and bartenders were allowed to serve alcohol. Mr. German announced daily conversations regarding carding individuals occurred at the restaurant. He emphasized the importance of asking if individuals were 21 years of age and confirming with identification before serving alcohol.

On January 26<sup>th</sup>, 2018 Mr. German was at the restaurant and was bussing tables. A University of Delaware group of students came in to eat dinner. He was surprised when Sgt. D'Elia called him over that evening as he had no idea they failed another compliance check. It was his understanding there were two officers from DATE and an underage CUW at the bar when Sgt. D'Elia noticed the bartender stole money. Mr. German reiterated he could not believe the CUW was served alcohol and stated the bartender was terminated that night. Mr. German expressed discussions regarding alcohol occurred with all staff yet again and purchased a card reader that read identification. He reiterated the importance of always carding and asking for identification. In addition to mandatory staff training events, Mr. German met with NPD and the Planning Director. Mr. German believed following the law was important and understood the severity and importance of compliance. He held meetings twice a day (right before lunch service and dinner service) to remind staff to ask patrons if they were 21 years old and check their identification.

The third incident occurred on September 21<sup>st</sup>, 2018 while Mr. German was out catering a wedding at Belleview Hall. While at the event, he received a phone call that informed him Caffé Gelato failed the third compliance check. Mr. German emphasized his shock and surprise that the failure occurred. As previously stated by Mr. Rhodunda, the one bartender asked a server to cover his post at the bar while he went to the restroom. He believed the CUWs were served in error and stated the bartender made a mistake. The bartender no longer worked at Caffé Gelato as a result of this error. When Caffé Gelato first opened, they were not allowed to have a bar. Therefore, Caffé Gelato has one SUP that permits the sale of alcohol. Other restaurants that opened after Caffé Gelato were allowed to have a bar.

Discussions at City Council involved how many seats a bar could have. At the time, the University of Delaware Courtyard Marriott paved the way for Caffé Gelato since they asked to have a bar in their lobby. The Courtyard Marriott was given permission to have barstools at their bar in the lobby. Shortly thereafter, Caffé Gelato expanded and put in a bar with ten bar stools. Mr. German believed the proposed penalty could quite possibly put Caffé Gelato out of business and described it as very severe. Additionally, receiving another violation would put the restaurant out of business as well. Mr. German said he was worried sick about the situation since September 21<sup>st</sup>, 2018. He reiterated the numerous discussions and reminders regarding alcohol safety with his staff. Mr. German emphasized he wanted to be in business in Newark and loved catering and serving the clients. He told the audience the importance of working for the client was emphasized with staff.

Mr. German requested Council to allow Caffé Gelato to remain open. He was not asking to be cleared of the responsibility and reiterated there were no more chances for the business. Mr. German requested a suspension of the bar service by requiring the removal of barstools and putting up a sign that said alcohol would only be served at tables. Mr. German reiterated the financial impact of a suspension would be significant as it would amount to approximately \$7,500 for fifteen days. He wanted to stay in business and smooth out the carding situation. While it was not explicitly written in his proposal, Mr. German said more management time and hours would be added to the front house staff. Before he had children, he managed the restaurant quite a bit on his own. Now that he had children, there were evenings that he was unable to manage the restaurant. Mr. German said more managers would be brought on to ensure compliance with servers and staff. He believed a fifteen-day suspension at the bar provided Caffé Gelato with the chance to stay in business and be open to serve the community and stay open in Newark. Mr. German thought a 30-day suspension would be very difficult.

Mr. Rhodunda asked Mr. German to discuss what measures he had taken since the September 21<sup>st</sup>, 2018 incident. Mr. German reiterated they implemented the date of birth verification software to the point of sale systems. The program cost around \$1,100 and was implemented the week prior. Mr. German expressed they were working with the system and believed it was functioning well. When serving alcohol, staff was now required to input a valid date of birth into the system. Mr. German expressed they instituted a policy by which everyone at the bar – even those who were just seated there – had to be carded regardless of their age. Identification was scanned into the system in order to be verified. Mr. German informed the audience the intent was to card just about everyone at the tables who were at least 40 years of age or younger. He reiterated patrons were carded at the bar, regardless of their age. Mr. German said they paid for and started internal compliance checks. Internal compliance checks consisted of University of Delaware students who were 21 years who sat at the bar, ordered alcohol and would report back if they were carded or their identification was scanned. Since they were over 21, they were able to consume the alcohol and did not give away their cover. Mr. German said the same steps were taken at the table and the students would report back with their findings. So far, they were five for five and compliant in the checks. If anyone were to fail an internal compliance check, they would be terminated immediately. The person who completed the checks recently just turned 21 and used to work with DATE and Sgt. D’Elia as an CUW.

Mr. German said they crosschecked data at the end of the night to ensure there was not a random date of birth put in lots of times. The software checked to see if a server or bartender put in a random date of birth which would indicate they were not properly checking identification. Other measures included checking cover counts for the bartender to see how many IDs were scanned to ensure the number matched the amount of people who went to the bar. Mr. German expressed there was mandatory retraining of all staff which included the Alcohol Beverage Training Certificate. The certificate lasted for four years in the State of Delaware. Mr. German said all staff were required to take the class and training, regardless of whether their certificate expired. Starting in January 2019, company-wide training would occur every other month. Mr. German apologized for the lack of managerial presence at Caffé Gelato and believed they should have performed better on the compliance checks. He asked Council to impose the suspension at the bar only and allow service to continue at tables. Mr. German thought some of the definitions of the restaurant licenses in Newark implied restaurants were permitted to serve alcohol at the table if an individual ordered a meal. When Caffé Gelato applied for a SUP, Mr. German emphasized the promise made which stated they would not be a bar or serve alcohol at night. While Caffé Gelato’s liquor license permitted them to serve alcohol until 1:00 a.m., the focus was on dinner business and serving alcohol at dinner time. Mr. German asked Council to impose a fifteen-day suspension at the bar and requested alcohol service to be permitted at tables by patrons who were eating food until 10:00 p.m.

Mr. Rhodunda announced Mr. Poppiti had extensive experience in alcohol enforcement issues and would offer additional comments. Ciro Poppiti stated his name for the record and informed the audience he also was the Register of Wills for New Castle County (NCC). Mr. Poppiti said his appearance tonight was not in his official capacity as the Register of Wills but rather as an attorney for Caffé Gelato.

He was retained by Mr. German because he spent the past twenty years in the alcohol industry, notably in management at NKS Distributors. Mr. Poppiti informed the audience he was a well-known, practicing alcohol attorney who lectured and frequently wrote regarding alcohol regulation. He thanked Council for the opportunity to address them briefly tonight and expressed his respect for them, City staff, and the NPD. While he offered his respect to the City, Mr. Poppiti said he was disheartened by the report issued about Caffé Gelato. As Mr. Bilodeau mentioned earlier, Mr. Poppiti stated Council must look to the standards for issuing and maintaining a Special Use Permit (SUP). The standard for issuing and maintaining a SUP was in essence a three-prong test; however, Mr. Poppiti reiterated he was disheartened since there was no discussion in the report that looked at the three-prong test and applied it to Caffé Gelato. Mr. Poppiti listed the three-prongs of the test as follows:

1. Does Caffé Gelato adversely affect the health or safety of the public;
2. Is Caffé Gelato injurious to the public welfare, and
3. Is Caffé Gelato in conflict with the purposes the Comprehensive Plan.

Mr. Poppiti unequivocally stated to Council the clear answer was that Caffé Gelato did not adversely affect the health or safety of the public. Additionally, Caffé Gelato was not injurious to the public welfare and did not conflict with the Comprehensive Plan. For these reasons, Mr. Poppiti believed Caffé Gelato should retain its SUP. Mr. Poppiti represented roughly 300 alcohol licensees in the State of Delaware whose licenses were in trouble. He had never seen such a public outpouring of support at a hearing as was evident for Caffé Gelato this evening. Mr. Poppiti said he was impressed with the high number of letters in support of Caffé Gelato. Additionally, Mr. Poppiti believed it was important to note a State Representative spoke positively about the business earlier in the Council meeting. He believed the amount of support was unusual and emphasized how important and well liked Caffé Gelato was to the community. Mr. Poppiti articulated his disappointment in the Planning Department's report for underage drinking; specifically, since the report said Caffé Gelato had a systematic problem with underage drinking. He firmly believed nothing could be further from the truth since the report looked at one factor which was the issue of not carding undercover decoys. Mr. Poppiti thought the report was silent on so many obvious key factors.

In order to help Council understand his point of view, Mr. Poppiti offered a college analogy since the City of Newark is a college town. A student applied to the University of Delaware and had a low SAT score. The University would not tell the student, "Well listen, you have a low SAT score; therefore, you have a systematic problem with studying and wouldn't succeed here at this university." Mr. Poppiti emphasized the University would not take this approach. Instead, the University would look at the low SAT scores as only one factor in the student's admission and would count other factors such as high school grades, courses studied, extracurricular activities and letters of support. Mr. Poppiti said the University looked at the totality of factors because no one made a decision on one factor. He believed Council should not make a decision regarding Caffé Gelato because of one factor. Based on his experience as an alcohol attorney and working in alcohol regulation, Mr. Poppiti looked at all the key factors which an expert would normally consider in evaluating whether a licensee has an underage problem such as selling to underage kids. First, alcohol sales needed to be compared to gross sales at the restaurant. A problem restaurant would generally have about 40% or more of its alcohol sales by percentage of its gross sales. In other words, \$0.40 on a dollar coming in was through the sale of alcohol. Caffé Gelato had 8% or \$0.08 on every dollar which came in from alcohol. Mr. Poppiti emphasized Caffé Gelato's percentage of alcohol sales was staggeringly low, especially given Newark was a college town.

The second factor to consider was in relation to the restaurant's menu selections. Problem restaurants generally served what Mr. Poppiti referred to as tailgate food at very low prices. Low prices were used as a mechanism to lure kids in so they would drink heavily. This was not the case with Caffé Gelato as its menu consisted of fine dining to the sophisticated customer. Mr. Poppiti thought Caffé Gelato was one of Delaware's very best restaurants and its menu prices were not low. Quite simply, kids do not go to Caffé Gelato unless they went with their parents or takeout gelato since the prices were targeted towards older clientele.

Finally, the third factor was the average age of the restaurant's customers. A problem restaurant generally attracts kids who are aware they can get access to alcohol even though they are underage. Mr. Poppiti expressed senior citizens primarily frequented Caffé Gelato and emphasized there was not a huge student presence. He reiterated the average customer was a sophisticated consumer who desired fine dining. It was Mr. Poppiti's opinion that Caffé Gelato does not have a systematic problem with underage drinking. For these reasons, he thought a 30-day suspension was inappropriate. Given his background and experience, Mr. Poppiti informed Council he helped Mr. German craft what they deemed to be an appropriate penalty which was previously circulated to Council and discussed earlier in the meeting. A two-week suspension of bar service, together with other proactive initiatives was reasonable; especially,

given the totality of all factors. Mr. Poppiti thought a two-week suspension of bar service addresses where the violations occurred. In closing, Mr. Poppiti respectfully stated the standard established in the City Code was clearly in favor of Caffé Gelato. Moreover, Caffé Gelato does not have a systematic problem with underage drinking. Mr. Poppiti reiterated his prior statement that no one makes a decision on one factor; furthermore, he firmly believed Council should not make the decision on one factor.

Ms. Sierer asked if Messrs. Rhodunda, Poppiti or German had any closing remarks. As they did not, she opened discussion to the table.

Mr. Markham believed underage drinking was a serious issue. Several people presented their concerns to Mr. Markham due to the fact they lost relatives (i.e. nieces or nephews) that died as a result of being served alcohol underage at various restaurants. He clarified this statement was not necessarily related to Caffé Gelato; however, losing a family member or death related to underage drinking was a traumatic event. Mr. Markham stated SUPs were a land control issue and were the prerogative of Council; furthermore, the legality of the City's SUPs was upheld as legal several times. He did not think the goal of the point system was to put someone out of business. However, Mr. Markham said Caffé Gelato's behavior needed to change. He thought the fact that violations occurred three times with three different bartenders provided evidence to substantiate Caffé Gelato needed to improve. Mr. Markham expressed he was very upset by the fact Caffé Gelato had to appear before Council on this matter. Caffé Gelato was in Mr. Markham's district and he believed he needed to question and address some of the issues therein. He questioned how Caffé Gelato would be able to prove the issue of serving alcohol to underage customers would be resolved without a 30-day suspension from Council. Mr. Markham said it was important to be assured Caffé Gelato would take this issue seriously; specifically, since they had previous conversations with the police and still were non-complaint. While there were proposed sanctions from Messrs. Rhodunda, Poppiti and German, Mr. Markham thought it was out of character since he believed a defendant typically did not propose sanctions to a judge.

Mr. Rhodunda said in the letter following the September 21<sup>st</sup>, 2018 incident, there were eight or nine new methodologies put in place to assure the City there would not be another incident. He announced the methodologies were detailed in a letter to Council. One of the sanction items was a software system which already was in use by Caffé Gelato. The software provided an additional method to check proper identification prior to serving alcohol. Mr. Rhodunda believed this would provide the most thorough review of a patron's identification based on everything that was implemented since September. Mr. Markham questioned if Caffé Gelato could provide proof to substantiate these measures were implemented by Caffé Gelato; specifically, if there were reports or charts to substantiate these measures. Mr. German announced Caffé Gelato documented this information since the software's implementation in September and would continue to do so. The internal compliance checks were documented as well. Mr. Markham asked why Caffé Gelato did not scan licenses to go away from manually inputting data. He wanted to provide ideas that he believed were more foolproof than Caffé Gelato's previous methods. Mr. German reiterated the ID scanner was purchased and stated it was a requirement for anyone at the bar to have their ID scanned. Mr. Markham questioned why Caffé Gelato did not scan IDs as people entered the restaurant as he thought it was an effective measure to ensure all IDs were checked. He looked for a gate to prove the problem was going away. Mr. German said they would be open to scanning IDs as people entered the restaurant. He emphasized he wanted to remain in business and recognized there would be many steps that needed to be taken for improvement. Mr. German believed the retraining of staff and mandatory recertification and training with Mr. Poppiti as an alcohol attorney would help. Furthermore, the increased management presence would alleviate the issue as well.

Mr. Markham questioned if Mr. German would comply with a request for training documentation by way of a motion from Council. The documentation for training would cover who was trained, how often training occurred and whether staff passed or failed. Mr. Markham suggested this information could be shared with the Planning Director or the NPD on a regular basis. Mr. German confirmed these measures could be taken. Mr. Markham agreed Caffé Gelato did not have a sufficient amount of managerial staff and thought Mr. German needed additional help looking after the business. He asked Mr. German if there was a reason why Caffé Gelato still had a bar since it appeared to be a recurring issue. Mr. German reiterated the focus was to have a dining restaurant; furthermore, when they previously asked for a bar, it was determined they could have a bar as a fine dining institution. Mr. Markham believed this was granted because of Caffé Gelato's history at the time. Mr. German believed most customers at Caffé Gelato were focused on eating as opposed to drinking at the bar. Mr. Markham asked Mr. German why he still had a bar at the restaurant. Mr. German expressed they had the responsibility of checking IDs at the tables as well as at the bar. Since some customers enjoyed sitting at the bar to eat, Mr. German believed it was appropriate to have a bar at the restaurant. He provided the example of single people who may prefer to sit at the bar and order food instead of sitting at a table by themselves. He expressed people who traveled by themselves or dined alone liked to sit at the bar and eat while conversing with others.



Mr. Markham asked if Caffé Gelato served liquor or if they served only beer and wine. Mr. German informed Mr. Markham that all alcohol was served at the restaurant (i.e. beer, wine and liquor).

Mr. Markham told Mr. German he thought the punishment needed to hurt to be impactful in order to get the point across. While he did not want Caffé Gelato to go out of business, Mr. Markham believed Caffé Gelato needed a recurring fix involved. Mr. German agreed with Mr. Markham and emphasized that all measures taken and the circumstances already hurt him and Caffé Gelato. He apologized for occupying Council's time with this matter. Mr. Markham told Mr. German that he and the other individuals at the table also wished they did not have to talk about the issue. While the economic impact of having the bar suspension was significant; however, it would allow Caffé Gelato to stay open and continue their business on Main Street. Mr. German thought the internal check system as well as terminating employees who violated policy would help to remedy the situation. The internal check system cost \$75 each time; additionally, the alcohol retraining would cost \$15 per person if they went through the Delaware Restaurant Association. Mr. German stated the restaurant covered the costs for training, retraining and did not ask servers to pay for these services with their own money. The added management presence would be the biggest cost; however, Mr. German emphasized these measures would be utilized day in and day out to ensure the situation did not occur again. Mr. German asked Council to allow Caffé Gelato to remain open in order for them to properly card IDs and provide service to the City of Newark.

Mr. Markham questioned why Mr. German requested a fifteen-day suspension for the bar as opposed to a 30-day suspension. Mr. German said he would accept a 30-day suspension at the bar; however, he was worried about the financial impact that would occur as he believed the loss would be approximately \$15,000. He clarified they would work very carefully to ensure the same penalties or failures did not occur again. Ms. Sierer questioned how the term "bar" was defined in Caffé Gelato's case. Mr. German thought they would address the issue of the bar by eliminating all ten bar stools in the area and putting up signage to indicate table service only. Additionally, staff would ensure patrons were seated at tables. Mr. German said there were a few high-top tables in the restaurant near the gelato area; however, he would be willing to prohibit alcohol from being served at those tables since they were in close proximity to the bar. He reiterated the intent of the restaurant was fine dining and was open to the possibility of the gelato tables as off-limits to alcohol.

Mr. Clifton asked Mr. German to clarify how long servers were required to carry tip cards. Mr. German said it was always a requirement for servers to carry tip cards; furthermore, staff who were non-servers also were required to carry them. Mr. Clifton questioned how long John Cordrey had been the Commissioner for the DABCC. The Liquor Control Act as defined by 4 *Del. C.* came into being roughly around 2001. Mr. Poppiti said Mr. Cordrey had been the sole Commissioner for the past eighteen years. Mr. Clifton believed it was possible to draw the conclusion that Commissioner Cordrey was around when Council enacted the SUP Ordinance. In fact, Mr. Clifton thought Council went by his recommendation when they chose a different path. Mr. Clifton thought Mr. Cordrey's letter to Council regarding Caffé Gelato was confusing as it appeared the SUP suddenly was a problem for him which was not the case in the past. He reiterated Mr. Poppiti's statement to the effect by which Council was legally bound to make a decision under provisions for SUPs. Mr. Clifton had a different interpretation of these provisions that Messrs. Poppiti, Rhodunda and German. He thought they referenced the way the statute was written; specifically, if he [Mr. German] was a really nice guy and donated money then he should get a pass on some of the issues. Mr. Clifton did not interpret the statute this way as he believed it had nothing to do with how nice Mr. German was or the quality of Caffé Gelato's food. He asked for clarification regarding what Mr. German meant when he indicated in a letter that a sanction would be financially devastating; specifically, when the initial thought of the financial implications of sanctions entered his mind.

Mr. Rhodunda believed Mr. German was able to speak for himself; however, he informed Mr. Clifton his client took issue seriously from the first event on. He thought it was appropriate for Council to understand what he believed were extenuating circumstances which occurred and were uncontested about how the issues came about. Mr. Rhodunda said Mr. German had taken affirmative steps which he acknowledged occurred after the most recent incident on September 21<sup>st</sup>, 2018. Nevertheless, Mr. Rhodunda believed Mr. German had taken many steps to address issues along the way. He thought even the NPD would acknowledge Mr. German's cooperativeness and willingness to improve compliance. There had been circumstances that arose which caused the situations. Mr. Clifton questioned if Mr. German was the sole owner of Caffé Gelato throughout the whole process and Mr. Rhodunda confirmed this was the case. Mr. Clifton questioned if the sole responsibility for Caffé Gelato fell on Mr. German or if there was any dispute to that statement. Mr. Rhodunda confirmed Mr. German had sole responsibility for Caffé Gelato; moreover, he believed his client showed Council [tonight] he had taken many affirmative steps to ensure the issue did not happen again. Mr. Rhodunda clarified Mr. German implemented [in September] more internal policies and regulations to ensure the incident would never happen again. Mr. Clifton believed it was important to hear the background information for this matter in order to show if Council

or the City was taken advantage of from time to time. He believed an agreement was reached on the legal parameters for SUPs. Mr. Clifton said information provided to Council told them how much money Mr. German donated to local organizations; however, he asked for clarification if a quid pro quo was suggested. In other words, he asked if other bars (student bars) would be in the same situation as Caffé Gelato if they did not donate money; specifically, if it would be a quid pro quo for Caffé Gelato and the same standard would not apply to another bar.

Mr. Rhodunda said most people who requested a SUP claimed they would do all these things (i.e. a great corporate citizen and involved in the community). After eighteen-years of running a very reputable business, Mr. German was able to show that he accomplished these things. Mr. Rhodunda believed this was a huge difference between Mr. German's restaurant and others. First, Mr. German was an excellent corporate citizen. While it was not necessarily possible to judge this on the front end, Mr. German demonstrated he was a good corporate citizen through many years of service to non-profits and the community. Mr. Rhodunda thought Council was fortunate to see what Mr. German accomplished versus someone coming to Council for a new SUP that did not have the same track record and were not able to deliver. Mr. Clifton said he would not use this fact as a basis for his decision because he agreed with Mr. Rhodunda's reasoning to the effect being a good corporate citizen and donations of money should not be the basis to a legal decision. He reiterated the testimony which reflected there were other restaurants that almost immediately took a different path and did not continue to fail their compliance checks. Mr. Clifton was aware of a restaurant that was cited early on where the manager came in and made sweeping changes on the first violation. While he could not prove Caffé Gelato used the same method one way or another, he thought it was unusual there were three incidents of underage alcohol consumption which did not seem to improve as was the case with other restaurants.

Mr. Clifton believed it was unusual for Caffé Gelato to receive three failures of compliance checks related to underage alcohol consumption; furthermore, he questioned what would lead him to believe a culture of alcohol related issues did not exist at Caffé Gelato. Mr. Rhodunda said he asked his nephew who attended the University if college students typically went to Caffé Gelato; moreover, his nephew told him students did not usually go there. Mr. Rhodunda personally observed an older crowd at Caffé Gelato and the alcohol they consumed primarily was a glass or two of wine. He compared Caffé Gelato to Sullivan's Steak House in North Wilmington where it was never thought people under 21 years of age would attend. Both Sullivan's Steak House and Caffé Gelato had nicer and more expensive food and wine; therefore, typically older patrons frequented the restaurant. In terms of equity, Mr. Clifton questioned if other businesses in a similar case would not be able to make the same claims as Mr. German when compared to the City Code. Mr. Rhodunda understood Mr. Clifton's concerns; however, he hoped Council would take into account the extenuating circumstances. He believed it would be different if people went into a bar and were not carded as part of the party scene. Mr. Rhodunda reiterated this was not the case for Caffé Gelato. While an underage individual was not carded on January 26<sup>th</sup>, 2018, Mr. Rhodunda believed the fact that the employee acted illegally of his own volition was an extenuating circumstance that merited consideration by Council.

Mr. Clifton asked Mr. Rhodunda how long the employee worked at Caffé Gelato before the incident on January 26<sup>th</sup>, 2018. Mr. Rhodunda was unsure how long the employee worked at Caffé Gelato prior to the incident on January 26<sup>th</sup>, 2018. However, he thanked the NPD for identifying an issue with the former employee. Mr. Rhodunda reiterated the employee was immediately terminated on the spot for stealing and failing to properly ID patrons. Although Mr. Clifton was happy the employee was immediately fired after the incident, he believed the employee's behavior was not an isolated event. Mr. Clifton believed the intent of the point system was to address issues related to underage drinking in the City. He told Messrs. German and Rhodunda the intent of the suspension was to send a message to the effect the behavior was intolerable. Furthermore, the suspension was not required to occur when it would be least impactful for the business. Mr. Clifton thought it was commonly discussed how certain high-leveled individuals believed in their own mind to be immune from the law. In this case, Mr. Clifton said testimony reflected the belief that Caffé Gelato required certain immunity to the law since it was a nice restaurant. Additionally, he thought testimony reflected the belief that Caffé Gelato was permitted to pick their own punishment. Mr. Clifton thought it was no coincidence Caffé Gelato's request for suspension occurred during the two slowest weeks of the year. Therefore, he did not believe the punishment requested was significant and would change the culture. Mr. Rhodunda expressed they did not want to lose people who were in support of Caffé Gelato. Mr. Markham requested quiet from the audience in order to maintain a respectful environment.

Mr. Rhodunda said many members of the public wished to comment on the matter and asked if the public would be permitted to speak. Ms. Sierer informed Mr. Rhodunda members of the public would be permitted to speak at the appropriate time after questions from Council were addressed. Mr.

Rhodunda thanked Ms. Sierer and expressed he would be happy to answer additional questions from Council or staff at this time.

Mr. Lawhorn asked if public comment would occur at this time. Ms. Sierer reiterated public comment would occur after Council completed their questions; furthermore, she asked Mr. Lawhorn to present his questions to the petitioner at this time. Mr. Lawhorn informed the audience he spoke to staff, NPD and other business owners in order to try to get an understanding of the Special Use Permit. Additionally, he reviewed other situations where other restaurants failed compliance checks. Mr. Lawhorn received numerous letters from at least eleven people he thought were in the audience. He did not doubt Mr. German was a fine individual as was evident through his contributions to charity and the community. Since he was elected to Council, Mr. Lawhorn stated he made his concerns regarding Newark's downtown area very clear. He believed downtown Newark thrived at the moment and hoped this would continue to be the case. Mr. Lawhorn acknowledged Mr. German's active participation in the business community; specifically, he thought Mr. German participated in the Downtown Newark Partnership (DNP) for his interests as well as the best interest for the general public. He thought Caffé Gelato's participation and contribution to the DNP influenced other businesses in Downtown Newark. Mr. Lawhorn believed Mr. German was a positive influence on the community in Newark and described Caffé Gelato as a fine restaurant.

While Mr. Lawhorn agreed Caffé Gelato did not target a young audience, he thought the restaurant had a systematic problem with underage consumption and service. This was due in part to the fact older clientele were attracted to the business; therefore, Mr. Lawhorn thought Caffé Gelato did not prioritize carding individuals as much as they should. He thought serving minors was a serious issue and was a bigger issue in a college town because of the opportunity. Mr. Lawhorn firmly believed carding needed to be a high priority for all restaurants regardless of the audience. He thought young people who desired alcohol service at Caffé Gelato would find a way to get served. He acknowledged minors would not go to Caffé Gelato and have a big party as was the case with other restaurants in town with live music or bands. Mr. Lawhorn believed it was inaccurate for Caffé Gelato to claim minors were not served alcohol due to the fact they failed three compliance checks. Mr. Lawhorn announced he expected a different presentation on this matter and thought Messrs. Rhodunda and German gave Council different messages. While he believed Messrs. Rhodunda and German recognized a problem and stated measures would be taken to fix it, it appeared they seemed provide reasons why they believed there was not a problem. Mr. Lawhorn was concerned with this fact and stated he wanted Mr. German's business to be successful. He pointed out one more violation would result in Caffé Gelato no longer being permitted to operate in the City. Mr. Lawhorn thought the possibility of losing the ability to do business in the City weighed heavily on Mr. German; furthermore, he did not want Mr. German to receive another strike. He reiterated his prior statement to the effect Caffé Gelato needed to change and supported the suggestions of increasing managerial staff. Mr. Lawhorn believed there were factors which took Mr. German away from the restaurant; however, he said it was not an excuse.

While Mr. Lawhorn appreciated Caffé Gelato's support and implementation of technology, he believed other measures needed to be taken. He acknowledged the restaurant's use of card readers after the second compliance check's failure and thought they obviously did not work. Mr. Lawhorn stated technology only worked when it was utilized and reiterated his belief Caffé Gelato had a systematic problem with underage consumption and serving to minors. Mr. Lawhorn personally thought Caffé Gelato was a high-quality restaurant and reiterated Caffé Gelato needed to prioritize carding. Technology would fail if it was not managed well. While technology made it easier for Mr. German in some respects, Mr. Lawhorn believed he was still required to implement better management practices. He believed the criminal bartender made the issue worse for Caffé Gelato as Mr. German was the individual who hired him. Therefore, Mr. Lawhorn thought Mr. German was responsible for the employee. Mr. Lawhorn recognized there were many difficulties associated with restaurant management; however, he thought it was not an excuse and was indicative of the restaurant's systematic problem. There was some enforcement and efforts by Caffé Gelato to card individuals which was evident since the undercover police officers were carded. Mr. Lawhorn reiterated the fact Caffé Gelato failed the compliance checks on three occasions and needed to fix the underlying issue. All that being said, Mr. Lawhorn hoped to see improvement since he did not wish for Caffé Gelato to be put out of business. Mr. Lawhorn was not in favor of the suspension for the bar area only since he believed it would be hard to enforce. Ultimately, he thought all measures taken needed to be enforceable by the City.

Mr. Lawhorn believed moving the suspension to January of 2019 was a good possibility because he thought the suspension in December might not be the best timing for Mr. German. He thought the restaurant's suspension could potentially place a burden on residents and businesses as he knew it was necessary to schedule months in advance during the holiday season. Mr. Lawhorn said the fact Mr. German would provide outside training to staff every other month was a step in the right direction.

However, he suggested daily management and attention to the issue in order to prevent failure and relapse. Mr. Lawhorn informed Mr. German that he was a bartender in his past at a restaurant that he described as similar to Caffé Gelato. When Mr. Lawhorn worked as a bartender, his manager highlighted the serious nature of serving alcohol to minors and enforced consequences accordingly. He appreciated Mr. German as an individual and appreciated Caffé Gelato in Newark. Mr. Lawhorn reiterated his statement to the effect he did not want Caffé Gelato to fail a fourth time and believed it was important for Mr. German to fix the day to day management of the restaurant. He stated Mr. German needed to acknowledge Caffé Gelato had a systematic problem as he believed it was a huge disservice if the issue was not admitted. Mr. German agreed with Mr. Lawhorn and said he was aware Caffé Gelato had a systematic problem when it came to checking IDs. He informed Mr. Lawhorn he was aware there was an issue of not checking IDs properly; moreover, Mr. German believed the recent implementation of software helped to shed light regarding which servers were compliant with the process.

Mr. German announced data from the software showed if all patrons at the bar had their IDs scanned on any given night. Mr. Lawhorn emphasized it was Mr. German's responsibility – not the Planning Department's – to manage Caffé Gelato. Mr. German agreed with Mr. Lawhorn's statement and assured him he understood it was his job to manage Caffé Gelato. Mr. German suggested the suspension at the bar as he believed that area had the most trouble with carding. Mr. Lawhorn understood Mr. German's point regarding the bar suspension; however, he thought there could be trouble in other areas of the restaurant (i.e. the tables). He reiterated Caffé Gelato's three failures was indicative of the restaurant's culture. Mr. Lawhorn informed Mr. German he was open to leniency from the 30-day suspension as well as the possibility of moving the suspension to the month of January upon further discussion. He preferred the suspension to apply to all areas of the restaurant in order to alleviate confusion and increase enforceability for the City. Mr. German informed Mr. Lawhorn he would ensure a suspension of the bar where people were not allowed to serve alcohol at the bar or be near the area. He emphasized alcohol would only be served at the table during the suspension and proposed curtailing alcohol service during this time to beer and wine only. Mr. Lawhorn said he did not want the suspension to be complicated or difficult; however, he believed the punishment needed to be effective and easy for the City to enforce. Mr. Lawhorn personally believed it was not good precedent to rely on the owner of a restaurant to establish terms for leniency and stated it [leniency] should be found through the time of the year the suspension would be enforced.

Mr. Morehead expressed concern regarding the severity of Caffé Gelato's violation. He believed the potential existed for Mr. German to lose his business entirely based on four violations. Mr. Morehead did not understand why Mr. German did not move heaven and earth after the receipt of the first violation to fix the problem. He expressed Mr. German spoke to Council during the entire presentation about the cost of implementing software and various measures to deal with the issues related to underage alcohol service. However, Mr. Morehead believed Mr. German's statements were reflective of an individual who was not taking the same costs as every other business in Newark to properly fix the problem. Mr. Morehead thought Mr. German's statements indicated he was being cheap. If Caffé Gelato was Mr. Morehead's business, he said he would have done everything possible to fix the situation after receiving the first violation. While he acknowledged Mr. Rhodunda's statements regarding changes implemented after the September 21<sup>st</sup>, 2018 violation, Mr. Morehead reiterated the measures were taken after the third violation which assessed eighteen points. He echoed statements from fellow Councilmembers to the effect he was not convinced the situation had Mr. German's full attention. Mr. German confirmed this was not the case and stated the situation had his full attention.

Mr. Morehead reiterated he was not convinced as he believed there was no indication of this fact. In his mind, he thought a violation of such a serious nature would merit dramatic change after the first violation. Mr. Morehead believed the first violation could have been resolved as he thought it was a simple training issue since the staff member in violation was not trained correctly. Mr. Morehead thought Mr. Lawhorn's analysis was spot-on since and reiterated Caffé Gelato had a systemic issue which started with Mr. German. Mr. Morehead told Mr. German, "It starts with your attitude. You've risked your business. There's no other way to say that and I don't understand why." He announced there were student bars in Newark that figured out how to address the issue and properly card patrons. Additionally, Mr. Morehead articulated student bars in the area understood they were foregoing service to the under 21 crowd; moreover, this theoretically consisted of 2/3 and 3/4 of the student population. He emphasized student bars in Newark understood they would be out of business if they served to the under 21 crowd. Mr. Morehead believed it was possible to be successful and not serve minors due to the fact that student bars in the City accomplished same. He agreed Caffé Gelato served an older clientele; however, they failed when a younger person [underage] came to the restaurant. Although compliance checks were administered at a reasonably rare instance, Mr. Morehead reiterated Caffé Gelato failed every time.

Mr. Morehead wondered about the businesses who spent money to do the training, implement technology, and put in extra management in order to prevent an issue like Caffé Gelato's from occurring. He emphasized it was important to correctly administer effective remedies to be successful with compliance and prevent future failures. Mr. Morehead thought Mr. German was asking for permission to implement proper procedures after multiple failures as opposed to taking preventative measures as was the case with other establishments. Mr. German denied looking at the situation from a cost-savings standpoint as well as being cheap to try not to follow the City Code. He informed Mr. Morehead the issue had been on his mind daily since the second instance in January. Mr. German announced he set daily reminders in his phone to prompt discussions with staff regarding compliance. He reiterated his disbelief for each compliance check failure and recognized it was important to get it right. Mr. German believed the measures that were now in place would solve the problem; specifically, he thought the increased managerial staff component in combination with the software would be effective. He emphasized his desire for Caffé Gelato to remain in business and did not want to close. Furthermore, Mr. German clarified the reason he mentioned the dollar amount associated with closure was to emphasize his desire to go about suspension and compliance correctly. He informed the audience he wanted to card everyone correctly and thought a 30-day suspension would practically put Caffé Gelato out of business.

Mr. German reiterated his request for the bar suspension as he believed it would allow food service at the table and be a restaurant. He echoed Mr. Clifton's statements regarding service during the dinner hour and emphasized closing the bar area during the suspension would promote Caffé Gelato as a business as opposed to a bar. Mr. German told Mr. Morehead he cared very much to remain in business, staying open and doing it correctly. He reiterated Mr. Lawhorn's statement to the effect he would be responsible for most of the management in addition to additional managers. Mr. Morehead said he would take Mr. German's claims more seriously if he told Council he would be willing to return his SUP if they received one more violation. Mr. German agreed with Mr. Morehead and told him he would give up his SUP if Caffé Gelato received another violation. Mr. Morehead asked Mr. German if he would surrender his SUP if Caffé Gelato received another violation. Mr. German confirmed this would be the case. He reiterated he would voluntarily give up his SUP and liquor license if Caffé Gelato failed another compliance check. Mr. Morehead was not interested in Caffé Gelato going out of business; however, he was amazed Mr. German got himself into the current situation so far down the road. Mr. Morehead thought it was ironic that many of the people who complained about underage drinking in their neighborhood were defending Mr. German on this issue. While he did not want Mr. German to fail, he had a strong perception Council had not received his [Mr. German's] full attention. Mr. Morehead did not understand why Mr. German put himself in this situation.

Mr. German reiterated he felt terrible about the situation and was embarrassed. He apologized for putting himself in this position. Mr. German adamantly stated Council had his full attention. Although Mr. Morehead enjoyed Caffé Gelato, he said the situation was about Mr. German and should not be about anyone else. Mr. German believed the issue affected his staff and expressed Caffé Gelato provided service to the community and customers. Mr. Morehead said he cared about Mr. German's staff and the community and said Caffé Gelato was a nice restaurant in Newark. Mr. German told Mr. Morehead he would give up Caffé Gelato's liquor license if another violation occurred. He restated his desire to remain in business. Mr. Morehead questioned if Mr. German believed the changes he made would ensure compliance. Mr. German believed the changes he made would ensure Caffé Gelato's compliance. Mr. Morehead reiterated he did not believe Mr. German's statement and said he personally thought additional protective measures should be implemented. Mr. German said he intended to implement additional protective measures and wanted to provide Council with a clear picture of the steps taken so far. He was worried sick about the issue and informed Mr. Morehead he did not sleep well as a result. Mr. German said he never took the issue lightly and emphasized the second and third instances increased the serious nature of the issue. Mr. Morehead expressed the entire situation was difficult for Council.

Ms. Wallace reiterated the Messrs. Rhodunda and Poppiti's prior comments regarding due process to the effect she believed due process was happening right now. She did not appreciate the comments made regarding due process and stated the hearing this evening was part of due process. Ms. Wallace agreed with many of the comments from her fellow Councilmembers. She firmly believed it was not about the mistakes that were made; however, it was how the mistakes were handled that were important. Ms. Wallace thought Mr. German handled his mistakes very poorly and it was the reason the matter came before Council tonight. She firmly believed the issue should not have come this far and reiterated Mr. German's failures were the result of his choices; specifically, the choices made were for his business, his employees and the community. Ms. Wallace articulated she enjoyed Caffé Gelato and believed Mr. German did not take his first or second mistake seriously. She said the third mistake is what prompted Mr. German to take the issue seriously. While she appreciated the changes Mr. German implemented and recommended, Ms. Wallace reiterated she was unsure Mr. German understood the seriousness of the matter at hand. Ms. Wallace said Mr. German's previous attempts to deal with the

situation did not establish the level of trust that she thought was necessary to believe him. She did not want Caffé Gelato to close and informed Mr. German she frequently ate at the restaurant, ordered takeout, and sat at the bar. She emphasized it was not an easy decision to make and reiterated Mr. German was solely responsible for the consequences.

Mr. German agreed with Ms. Wallace to the effect he believed he was responsible for failing the compliance checks. He reiterated his remorse for the past failures and believed the new measures put in place would be successful to promote change. Moreover, Mr. German stated he should have put the measures in place after Caffé Gelato's first failure. He informed Ms. Wallace that he assumed the first failure was an isolated event since a new employee filled in for a server which should not have occurred. Mr. German articulated his concern for the issue always existed; however, the concern and measures to affect change increased after the incident on September 21<sup>st</sup>, 2018. He asked if Council would be able to shorten the suspension if they chose not to limit suspension only to the bar area; specifically, he questioned if Council would be willing to enforce a week-long suspension for the restaurant. Mr. German suggested the bar suspension since Caffé Gelato did not have a bar area from 2000-2008; however, other restaurants in Newark were permitted to have bars. During that period (2000-2008), Caffé Gelato was allowed to serve alcohol to customers at the table with their meals. He requested a month-long suspension for the bar area only as it would permit customers to be served alcohol with their meal while seated at a table. Mr. German believed it would be easy for him and his staff to ensure the bar area was closed during the suspension period. He expressed his appreciation to Council for taking the time to speak at the Council meeting. Mr. German assured Council it was his top priority to ensure proper carding at Caffé Gelato in order to combat the problem with underage alcohol consumption in his restaurant.

Ms. Wallace told Mr. German the City had SUPs for a reason and questioned the message that would be sent to other businesses if Caffé Gelato did not receive an appropriate consequence. She believed the SUP was important to address issues related to underage drinking and reiterated it [underage alcohol consumption] was a pervasive problem throughout the City. Ms. Wallace firmly believed there were consequences for breaking the law. Mr. German reiterated his request for the suspension at the bar area of the restaurant as it was his interpretation that the SUP permitted alcohol service for restaurants at a table with a meal. Additionally, Mr. German said a 30-day bar suspension would be a significant penalty for Caffé Gelato. By limiting the suspension to the bar area only, he restated Caffé Gelato would be able to provide service to customers. Mr. German said the 10:00 p.m. penalty was added to the suspension to ensure to further illustrate the point Caffé Gelato was a restaurant that served food. He understood the implications of failing another compliance check and emphasized the suspension he proposed was significant and allowed him to stay in business. Regardless of the outcome, Ms. Wallace hoped Mr. German took a serious look at his business model as she thought it was apparent the bar area was an issue. Ms. Wallace thought Mr. German should consider removing the bar from the restaurant and agreed with his proposal to hire additional management staff. She echoed Mr. Lawhorn's concerns to the effect of having the suspension occur in December would negatively impact the residents and customers. Additionally, Ms. Wallace thought the students would be leaving town for the month of December and believed it would be more appropriate for the suspension to occur when students came back to town after the winter session.

Mr. Hamilton asked Mr. Bilodeau if the City Code had a definition of a bar versus a restaurant. Mr. Bilodeau said he would defer to Ms. Gray on this question; however, he did not believe the City Code had a specific definition for a bar. Ms. Gray said Section 32-56.4 provides an institution must be a restaurant in order to serve alcohol; specifically, an establishment was required to have a full-service menu. Mr. Hamilton questioned if there was a specific food to alcohol ratio and Ms. Gray confirmed this was the case. Restaurants were not permitted to serve alcohol for more than 15% of the total number of seats which included outdoor seating. Mr. Hamilton asked Sgt. D'Elia if there was a list of bars that were frequent offenders. Sgt. D'Elia confirmed there were bars in the City that had problems; however, they were dealt with through the SUP. Mr. Hamilton questioned if the bars typically behaved themselves and questioned if they were required to appear at a hearing before Council. Besides Seasons' Pizza who voluntarily gave up their liquor license, Sgt. D'Elia informed Mr. Hamilton that other bars and restaurants fixed their problems by the second violation and did not appear before Council. While he understood there was a certain business affected by the assessment of points, Sgt. D'Elia expressed the establishment's number of complaints decreased greatly after their mandatory meeting after the second violation. Mr. Hamilton found it interesting that people who made disparaging comments about underage drinking seemed to support Caffé Gelato.

Mr. Hamilton stated he recently experienced an alcoholic beverage removed from his hand at closing time. Although the incident did not occur in Newark, Mr. Hamilton asked Mr. Bilodeau if Newark had any laws regarding alcohol and closing time. He wanted to know if bars in Newark were permitted to sell alcohol up until closing time or if there was an earlier cutoff. Mr. Bilodeau stated most bars had a last

call rule where they ceased serving alcohol at a certain time. He expressed he would need to review the City's ordinance; however, the ordinance's language said there was a certain time period where alcohol could no longer be served or consumed. Mr. Hamilton requested follow-up information due to the fact Mr. German's proposed suspension included a stipulation whereby alcohol was no longer served after 10:00 p.m. or 10:30 p.m. He believed everyone was extremely focused on the three incidents which lead up to the maximum assessment of points through Newark's point system. Mr. Hamilton asked Mr. Bilodeau if Council had any control or had the ability to mandate which types of employees were hired at businesses in Newark. Mr. Bilodeau said restaurants had their servers go through training; however, the City did not mandate training. He informed Mr. Hamilton the Delaware Office of Alcoholic Beverage Control Commissioner (OABCC) was in charge of training. Mr. Hamilton questioned if Council was required to judge or determine bad employees. Mr. Bilodeau said Council's role was to judge the results the employees that were hired.

Mr. Hamilton believed Mr. German told Council the first failure was due to the fault of a newly hired employee. Mr. German clarified he did not blame the new employee and took full responsibility for the issue. Mr. Hamilton said the second failure was attributed to a criminal and questioned whether Mr. German performed background checks on his employees. Mr. German announced he did not conduct background checks on his employees. Mr. Hamilton asked for clarification regarding how Mr. German found the employee associated with the second incident had a criminal background. Mr. German expressed the one incident that resulted in the second failure revealed and defined the employee as a criminal. He reiterated Sgt. D'Elia witnessed the employee stealing money and serving alcohol to underage customers. Due to those reasons, Mr. German fired the employee immediately (January 26, 2018). Mr. Hamilton asked if any of the employees involved in the three incidents (November 15, 2017; January 26, 2018 & September 21, 2018) were still employed at Caffé Gelato. Mr. German said the employee associated with the first incident (November 15, 2017) now worked as a full-time school teacher and also was employed part-time at the restaurant. He reiterated the employees associated with the second and third incidents were terminated and no longer employed at Caffé Gelato. Mr. Hamilton thought Mr. German implied the former employees from the second and third instances were the real problem. Mr. German confirmed this was the case and echoed Mr. Morehead's statement to the effect Caffé Gelato needed to improve. He believed a culture of compliance needed to be established; moreover, he stated the additional managerial staff and recently implemented technology would be effective. Mr. German announced he had to make the situation 100% right and compliant.

Mr. Hamilton questioned Mr. German why the repeated training seemed to be ineffective with staff. Mr. German believed the lack of management presence in the restaurant was the main component or reason the training seemed to be ineffective. He informed Mr. Hamilton alcohol compliance was not mentioned on a daily basis prior to the first incident. However, the issue was discussed daily at Caffé Gelato and follow-up and monitoring of staff increased. Mr. German expressed the new software helped to check compliance through date-of-birth; specifically, he was able to see the rate of IDs scanned by staff to ensure proper carding procedures were followed. He restated proper carding procedures were at the top of his mind as well as the staff at Caffé Gelato. Mr. German reiterated staff used the new technology and properly carded patrons every day. He emphasized staff checked IDs every day and reiterated the necessity to pass compliance checks and clean up the system to ensure future failures would not happen. Mr. Hamilton questioned if Mr. German claimed he did not have enough management in the past and if he believed another manager would have prevented non-compliance. Mr. German reiterated he accepted full responsibility for the issues and non-compliance. He announced he and his wife had three children in the past five years who were all under the age of five. Prior to having children, he was able to devote more time to management and staff oversight. Mr. German believed additional management needed to be hired to fill in the gaps and ensure staff always checked IDs and were compliant with the law. He articulated his goal to remain in business and fully obey the law.

Mr. German announced a thirty-day suspension at the bar would result in a financial loss of \$30,000. He mentioned the cost as a way to show the impact a suspension would bring and did not bring it up to be cheap. Mr. Hamilton appreciated Mr. German's review of the numbers as well as the voluntary revocation of the liquor license if a future incident occurred. Mr. Hamilton asked Messrs. Rhodunda and Poppiti if Mr. German was allowed to say he would give up the license or if they would allege such statements were made under duress. Mr. Rhodunda said Mr. German made a statement on the record and it was his commitment. Mr. Hamilton asked if the \$30,000 loss from the suspension would be for total revenue or alcohol sales. Mr. German confirmed the \$30,000 loss would be for total revenue. Mr. Hamilton questioned how much it would cost to hire another manager. Mr. German expected Council would impose a suspension and informed Mr. Hamilton a manager would be hired regardless of the result. He stated a manager would cost between \$40,000-\$60,000 per year. Mr. Bilodeau clarified the proffer for giving up the liquor license if one more offense occurred; specifically, he stated the parameters dictated

four offenses could not occur in a five-year period. He wanted to provide clarity to this proffer to the effect the time period for offenses ran for five years as opposed to an indefinite amount of time.

Mr. German reiterated a front-end manager was needed to ensure the restaurant's compliance as well as make sure the issue did not happen again. He did not want to be put out of businesses or desire to close. Mr. German said it was important to invest in additional management in order to improve compliance and benefit the community. He requested Council impose the suspension at the bar area only to allow Caffé Gelato to remain open and serve tables. Mr. German believed the investment of additional management, new technology and internal compliance checks would assist Caffé Gelato to reach full compliance. When full compliance was achieved, he believed the issues and system problem would cease to exist. Mr. German expressed his desire to remain open and his commitment to following the law and conducting proper procedures. He believed in serving the community, customers, and his staff. Mr. Hamilton appreciated Mr. German's comments and thought Caffé Gelato's success depended on his employees and their compliance. Furthermore, he thought the employees should have enough respect for Mr. German and management to follow procedures and comply with the law.

Mr. Hamilton questioned why Mr. German believed his employees would comply with his methods when it was apparent they previously did not take it seriously. He asked what steps were taken to change staff's compliance; specifically, regarding the difference in this effort since other efforts were unsuccessful. Mr. Hamilton stated technology would not work if the employees were not compliant and respected Mr. German's rules and procedures. Mr. German believed daily procedures and staff monitoring would be effective to ensure compliance with the law. He reiterated daily checks would include the number of IDs scanned as well as the staff who scanned them. Mr. German said the date-of-birth technology would record how many glasses of wine or alcohol were served to customers. He stated procedures would be put in place to ensure successful checking of IDs and remain compliant with the law. Mr. Hamilton asked Sgt. D'Elia if he was familiar with the technology Mr. German implemented. Sgt. D'Elia informed Mr. Hamilton he was familiar with card scanners. He questioned if Sgt. D'Elia was familiar with the date-of-birth technology where customer's alcohol consumption was recorded. Mr. Hamilton asked Mr. German how he would match up the customers at the bar with their IDs and the number of drinks ordered. Mr. German articulated each server had a number of covers for the evening whereby a report would generate to show how many people were served at the bar. He reiterated the process was straightforward; however, strict guidelines and procedures needed to be in place to ensure success. The date-of-birth technology was set up in a manner that recorded each drink and was associated with the individual who ordered it. Mr. German reiterated his desire to remain open and in business; moreover, he was in the process of establishing procedures and protocol for staff to follow to remain compliant.

Mr. Hamilton said he and members of Council did not want to run Mr. German out of business. He believed it was interesting to claim the public's health and wellbeing was not affected by Caffé Gelato's non-compliance; specifically, since the non-compliance was related to underage alcohol consumption and serving minors. For this reason, Mr. Hamilton believed it was inaccurate to state the health and wellbeing of the public was not affected by Caffé Gelato's non-compliance. He hoped Caffé Gelato would not come before Council again for this issue. Mr. Hamilton believed Caffé Gelato greatly benefited the community through their charitable contributions and expressed the desire for the relationship with the public to continue. Mr. Hamilton thought most people who came to the meeting supported Mr. German as a person as opposed to a plate of pasta. He said it was commendable since members of the public spoke highly of Mr. German and openly supported him. Mr. Hamilton reiterated his statement to the effect he thought it was inaccurate to claim Caffé Gelato's non-compliance did not affect the public.

Ms. Sierer opened the discussion for public comment.

Jack Bartley, 515 Hyde Park Drive, New London, Pennsylvania, greeted Ms. Sierer and Council and announced he was a professor at the University of Delaware and president of the Newark Symphony Orchestra. Mr. Bartley had been in the Newark area since 1976 when he got out of the Navy to earn his Doctorate in Biology at the University. There was an underage drinking in 1976 as well as now. Mr. Bartley emphasized the majority of underage drinking occurred in residential neighborhoods. Furthermore, he believed the incidents at Caffé Gelato were an insignificant part of Newark's underage drinking problem. While Mr. Bartley acknowledged a problem at Caffé Gelato, he believed it was insignificant when compared to the greater systemic issue of underage alcohol consumption in the City. Mr. Bartley said Caffé Gelato was not a destination spot for drinking and did not believe people went to the restaurant primarily to consume alcohol. His children attended college at the University and did not consider Caffé Gelato as a drinking spot. Mr. Bartley described the patrons of Caffé Gelato as members of the following:

1. The small business chamber [which he was a part of];



2. The Newark Symphony Orchestra [which he was the president of and recently hosted a fundraiser at Caffé Gelato];
3. Business people, and
4. Professors and Colleagues.

Mr. Bartley said he and others enjoyed going to Caffé Gelato and ordering appetizers, drinks and food after work. Moreover, people who were patrons of the arts and went to see chamber concerts, enjoyed going to Caffé Gelato beforehand. Mr. Bartley articulated Caffé Gelato was a restaurant people attended for fine dining. He observed Mr. German work very hard at Caffé Gelato and described the three incidents as slip-ups. Mr. Bartley believed Mr. German had taken steps to correct his mistakes and address the problem of underage alcohol consumption and improper carding. He agreed with prior statements from Council to the effect technology would only be successful if it were used properly and oversight of staff occurred. Mr. Bartley believed the increase in managerial staff and presence would ensure compliance and prevent futures issues from occurring since oversight would be in place. He described Caffé Gelato as an extremely important part of the community in Newark and was more than just food. Mr. Bartley said Caffé Gelato was one of the destinations people went to when they came into Newark because they wanted the community to thrive.

He informed the audience he was in the military for a long time and was a coach. For these reasons, he believed training and repetition were important and would help Caffé Gelato's success and future compliance. Just as practice in sports and athletics implemented muscle memory, Mr. Bartley believed Caffé Gelato's practice and protocols would change the climate at the restaurant and prevent future failures. Consistent training for months at a time would institute a mindset of compliance and obedience to the law for Caffé Gelato's employees. Mr. Bartley said a reflex would develop with staff where they would properly card patrons and would not serve underage customers.

Carl Ruohnen, 4 Falling Tree Court, Newark, Delaware, said he had been a resident of Newark for 44 years. Additionally, he announced worked for Chrysler-Mopar as an Operations Manager for 35 years. Mr. Ruohnen informed the audience he resided at his current address for 30 years and stated he and his wife owned three businesses in Newark. While experiencing the full margins of profit, Mr. Ruohnen was fully aware any loss of revenue could be regained. He referenced the revision of Elkton Road and what happened to his gas station at that location. Mr. Bartley expressed he frequently went to Caffé Gelato with his family. When his son and daughter visited him from Michigan after a twenty-first birthday, they were carded by a waitress at Caffé Gelato with a smile and a thank you. The carding occurred while they were seated on the porch. Mr. Bartley said his family enjoyed a private lunch in the fall this year and his daughter-in-law – who has a young-looking face – was asked for her ID with the same pleasantries as the occurrence in the spring. In closing, Mr. Bartley found Mr. German's business acumen, personality and hospitality to be summed up in two words, "class-act". He requested Council to take his statement into consideration when determining the suspension.

Marian Palley, 11 North Townview Lane, found it difficult to believe Mr. German had knowledge of staff serving alcohol to minors. She thought Mr. German had a very successful business and did not have any incentive to serve alcohol to minors. Ms. Palley said the average age of Caffé Gelato's customers was over 40. She informed the audience Mr. German was a local person who graduated from the University, stayed in Newark and built a very successful business on Main Street. She announced Mr. German was a major contributor to volunteer organizations and charities in Newark. As the past president of the Newark Friends of the Symphony Orchestra, she stated Mr. German provided generous support for the orchestra. Additionally, the Newark Symphony Orchestra held an annual wine dinner at Caffé Gelato where Mr. German donated a significant portion of the proceeds to the orchestra. Ms. Palley described Caffé Gelato as a Main Street magnet; specifically, the restaurant brought attention to the Main Street area and additional revenue to other businesses. She stated people came to Caffé Gelato from outside of Newark and believed it was not just a local attraction. In Ms. Palley's almost 50 years as a resident of Newark, she was aware of the City's problem of systematic alcohol abuse from minors. She reiterated the problems in Newark that were related to alcohol abuse; however, Ms. Palley did not believe Caffé Gelato knowingly served minors. Ms. Palley stated Caffé Gelato was one of the only restaurants in Newark that served patrons with style and grace.

She objected to Mr. German and Caffé Gelato being punished or suspended from what she considered to be an error in serving alcohol to minors. Ms. Palley did not think the problem would happen again since she believed the measures Mr. German took were sufficient. She thought the scanning measures and technology would prevent future failures and assist Caffé Gelato's compliance; furthermore, she suggested the City should consider requiring all restaurants and bars in Newark to use the same system.

Howard Palley, 11 North Townview Lane, said he was glad Council was willing to listen to members of the community who wished to comment on Mr. German's behalf. He expressed he was 82 years old and wished Council would have listened to members of the community before they lectured Mr. German. Mr. German moved to Newark in 1970 with his wife; moreover, his wife was a professor at the University of Delaware and he was a professor at the University of Maryland. Neither Mr. Palley or his wife drank beer. Mr. Palley believed Mr. German's restaurant was a stable, better class restaurant in the City of Newark. Caffé Gelato was not a fast-food restaurant or an establishment that served lower price meals. Additionally, Mr. Palley claimed Caffé Gelato was not an establishment that lured people in to drinking beer and other alcohol. He firmly believed Mr. German was a tribute to the community of Newark. Mr. Palley thought Mr. German was being unfairly skewered for some mistakes that he made. Furthermore, Mr. German indicated he was aware of his mistakes and had measures in place to correct them and prevent future occurrences. Mr. Palley said one of Mr. German's mistakes was that he had a young family and was not able to manage the restaurant to the extent he did in the past. He told Council and the audience they needed to have compassion and human heart.

Mr. Palley restated Mr. German was aware he was not able to be as involved as a manager; therefore, he would hire another front-end manager to provide additional and satisfactory oversight. He expressed he found it painful to watch some of the degradation Council put Mr. German through. Mr. German believed the imposition of a computerized system for carding would negatively affect some Newark businesses as he thought it would lead to the closing of many restaurants which emphasized beer drinking. He announced he drove past Grotto's Pizza on Main Street over St. Patrick's Day and firmly believed all individuals outside on the deck were not 21 years of age. Mr. Palley told the audience they were naïve if they believed drinking around the University was limited to individuals over 21 years of age. He reiterated Mr. German's restaurant was not based on serving alcoholic beverages and liquor to college students. Mr. Palley believed Caffé Gelato was based on fine dining and serving ice-cream.

Elaine Markell, 222 Hullihen Drive, announced she came to Delaware in 1958 and had lived in the area for 60 years. This was Ms. Markell's first time coming to Council Chambers and she said it was a warm and comfortable environment. Moreover, Ms. Markell articulated she listened to the meeting for the past five hours. Ms. Markell informed Council she was previously unaware of the issues at Caffé Gelato; however, she thought Mr. German did not deserve some of the degradation and negativity he received. She declined from giving accolades to Mr. German because she said it was common knowledge what a charitable and gracious human being he was. Ms. Markell was grateful for all Mr. German accomplished for the community in Newark and the larger community of the State of Delaware. She stated people came to Caffé Gelato from outside of Newark and were customers at other businesses in Newark. Ms. Markell expressed Caffé Gelato was instrumental in bringing business to Newark and other businesses on Main Street. She articulated Council needed to feel more compassion for Mr. German. Ms. Palley and her husband observed Mr. German's efforts since he started Caffé Gelato and were fascinated with his successful marketing; moreover, they were impressed with how he built up his business and demonstrated loyalty to the City of Newark. She respectfully requested Council to take Mr. German's merits into consideration and impose a lighter sentence.

Karl Kadar, 218 Walker Way, announced he was superbly represented by Mr. Markham as a resident of District 6. He was disappointed by Messrs. Rhodunda and Poppiti's comments to the effect they described Caffé Gelato as a place that was frequented by individuals in their 40s and 50s. Mr. Kadar expressed he knew Mr. German for many years as he moved to Delaware in 1995. He befriended Mr. German shortly after his move to Delaware and frequented Caffé Gelato. Mr. Kadar affirmed the comments made about Caffé Gelato and described the establishment as a restaurant and not a bar. He adamantly stated Caffé Gelato was not an establishment people went to in order to get a quick drink late at night. Mr. Kadar announced he frequently worked with Mr. German and hosted many wine and spirits dinners at Caffé Gelato. He informed the audience he was one of Mr. German's speakers at the dinners and had a regular clientele that followed him. The first dinner Mr. Kadar hosted at Caffé Gelato was a Scotch dinner. He recalled watching the server pour the scotch into glasses and remembered feeling frustrated since it was a slow process. In order to speed up the process, Mr. Kadar approached the server and attempted to pour scotch into glasses. The server immediately reprimanded Mr. Kadar and informed him he was not authorized to serve liquor in the restaurant and needed to put the bottle down. Mr. Kadar complied with the server's request and said he was unfamiliar with the regulation. Since that incident, he was aware of the law and did not try to help serve alcohol in the restaurant.

Mr. Kadar thought it was possible for everyone to agree Mr. German's violations occurred; however, he said Mr. German had many things going through his head at any given time. Mr. German was so busy that he rarely had even two or three minutes to talk with people and spend time with them [in Caffé Gelato] since his mind was constantly thinking about topics with the restaurant. Mr. Kadar expressed he spoke with Mr. German over the past few days and had never seen him as focused on the restaurant

and concerned as he is now. He believed Mr. German realized what would occur if he failed again. Mr. Kadar thought Council should give Mr. German the opportunity to pay a fine, incur financial burden and impose the sanctions he requested.

Jim O'Neill, 504 Lark Drive, announced he was present at Council to describe very strongly what he thought of the matter at hand. Mr. O'Neill stated he directed the Center for Economic Education and Entrepreneurship at the University and relied on resources in the community. One resource he could always rely on was Mr. German. From an economic standpoint, Mr. O'Neill thought of Caffé Gelato as the embodiment of skill over benefits or skill over costs. Mr. O'Neill believed Caffé Gelato was a core element in the community and stated its closure would affect the City of Newark and the businesses in the surrounding area. He emphasized how important Mr. German was to his students, teachers, and the Center of Economic Education and Entrepreneurship. He realized Mr. German made mistakes and acknowledged this fact. Mr. O'Neill believed Mr. German was committed to fixing the mistakes and moving forward to ensure they would not happen again. He reiterated he knew Mr. German since 1995 and was around since Caffé Gelato's initial opening. Caffé Gelato was originally known as an ice cream place and grew tremendously to be an excellent restaurant. Mr. O'Neill suggested Council consider Caffé Gelato's impact on the community and the students of the University if it went out of business. He requested Council's consideration of a compromise for the suspension which would close the final chapter of Caffé Gelato's underage drinking problem.

Larry Monaghan, 24 East Mill Station Drive, said he resided at his address for the past 30 years. He stated he was not a lawyer, recorder of deeds and bar or restaurant owner; furthermore, he was not related to Mr. German. Mr. Monaghan said he worked with Mr. German as he worked with high school students. While he thought Mr. German gave a clear proposal, he believed he missed Council's proposal. Mr. Monaghan thought Council suggested ideas that would provide a better compromise than what Mr. German proposed; furthermore, the ideas Council expressed would not result in Mr. German losing the restaurant. He emphasized he had known Mr. German for over twenty years and observed his remarkable character. Mr. Monaghan thought Mr. German's character needed to be considered. He quoted Michael Douglas from his remarks on the American prison system, "this is about character." Mr. Monaghan believed Mr. German based on his character and thought he would accomplish what he stated. Furthermore, Mr. Monaghan said Mr. German would straighten out the mess in front of him. Mr. Monaghan expressed desire to learn what measures were taken by businesses that previously failed their compliance checks and cleaned up their act. He believed restaurant and business owners should arrange a meeting to determine successful measures and policies to combat the underage drinking problem. Mr. Monaghan was not as concerned with the punishment as was mainly concerned with the future. He believed the problem needed to be corrected and stated Caffé Gelato should remain open.

Laurel Rockwood, 1024 Christina Mill Drive, stated she resided in Newark for the past thirteen years and worked at Caffé Gelato for approximately ten years. She currently did not work at Caffé Gelato due to a recent knee surgery; furthermore, she thanked Dr. Michael Axe from First State Orthopedics for a successful surgery. Ms. Rockwood stated Dr. Axe was in the audience earlier to show his support for Mr. German. During the ten years she worked at Caffé Gelato, Ms. Rockwood said she always used her tip card and carded customers. She expressed the restaurant always carded customers and believed the importance of compliance was frequently discussed with staff. Ms. Rockwood objected to the implication that Mr. German recently increased carding due to the three incidents; furthermore, she thought carding and procedures were emphasized with staff prior to the incidents. She believed the recent turnover at Caffé Gelato contributed to the problem which led to the three violations. Additionally, Newark was a college town and many new employees came into the restaurant. Ms. Rockwood believed bi-monthly training for alcohol education and compliance would be very helpful to staff and would help to ensure compliance going forward. She expressed new employees came in with each semester at the University.

Ms. Rockwood asked Council to take in consideration of the staff that worked at Caffé Gelato because they depended on their job to pay bills, make payments on student loans and make rent. She reminded Council young people worked at Caffé Gelato and requested they factor this into the decision for sanctions. If people did not come in to Caffé Gelato since they knew alcohol would not be served, the volume of customers would decrease, and employees would financially struggle. Ms. Rockwood stated she attended a Christmas party at a location in Maryland over 90 minutes away over the past weekend and ran into an individual that she had not seen for ten years. The individual told Ms. Rockwood she was fortunate to live in Newark as there was a really great restaurant in town called Caffé Gelato. He informed Ms. Rockwell he frequently took clients to dinner at Caffé Gelato. She reiterated there were many people who came to Newark from out of town to experience Caffé Gelato.

Marc Marcus, 419 Beverly Road, stated he was a resident of Newark for 39 years. He announced he was the Assistant Executive Director of the Friendship House and had been a customer of Caffé Gelato

ever since it opened. Mr. Marcus said the majority of his contact with Mr. German was over the past eleven years because he supported the Friendship House. Mr. German sponsored an annual race to raise money for the Friendship House and events were very helpful. Out of all the businesses in Newark, Mr. Marcus said Mr. German was the most supportive of Friendship House and had a great heart for the people served there [at Friendship House]. Before he worked at Friendship House, Mr. Marcus was in the business field for over 32 years. Mr. Marcus believed Mr. German was the most dedicated, controlled and organized businessman he ever came in contact with. While there were issues of concern, he firmly believed Mr. German would be able to fix the issues and move forward.

Tom Dunn, 6 Confluence Court, echoed the comments made by the public on Mr. German's behalf. He believed everyone understood Mr. German's story and described Caffé Gelato as a landmark on Main Street. Mr. Dunn thought Caffé Gelato was good for the City and believed it was important for everyone to think about this fact. He agreed underage alcohol consumption clearly was a problem in Newark; however, it was Mr. Dunn's opinion that Caffé Gelato did not create the problem as it was not that kind of restaurant. Mr. Dunn believed Mr. German received Council's message; furthermore, he understood the severity of the situation regardless of the punishment to be chosen. He stated Mr. German would take the correct measures to fix the problem and ensure the aforementioned violations would not occur in the future.

Rich Dudek, 208 North Pembrey Drive, informed Council he appeared to support Mr. German as a character reference. He described Mr. German as a successful businessman, role model, and exemplary individual. Mr. Dudek remembered when Mr. German came into his business class at the University of Delaware in 2002. Mr. German presented his new concept to keep businesses going through the hard times. Mr. Dudek stated the summer used to be a difficult time for restaurants on Main Street since the area cleared out when students left campus for the summer break. However, Mr. German decided to continue to sell gelato to keep his business alive and keep the locals attending his restaurant. Mr. Dudek emphasized Mr. German now sells ice cream, food and a great wine menu. Furthermore, Mr. German provided awesome catering for many organizations throughout the State of Delaware. Mr. Dudek announced he worked with Mr. German through commercial real estate for the past ten years. He believed Mr. German always accomplished what he said he would do; moreover, Mr. Dudek stated Mr. German understood the message from Council. He hoped Council would work with Mr. German and reiterated his belief positive change would occur. Mr. Dudek informed the audience he was a father of a toddler and recently received a message from his wife inquiring when he would return home. He reiterated he was present at the meeting to support Mr. German since he was a client and a friend. Mr. Dudek believed Mr. German would fix the issue and hoped Council would not impose additional hardship. Mr. Dudek adamantly stated Mr. German was a role model and beneficial for the City of Newark; moreover, he thought additional hardship would negatively impact Mr. German's staff.

Frank Boyko, 308 Suburban Drive, said he owned a business in Newark for eleven years and was not a resident of the City. Caffé Gelato had been a client of Mr. Boyko for the past ten years. While typical problems most restaurants experienced occurred at Caffé Gelato, Mr. Boyko announced he never had reason to doubt the sincerity of Mr. German or any members of his staff. He said he never experienced Mr. German or any staff members display a cavalier attitude about this matter or regarding concerns in general. Mr. Boyko stated Mr. German addressed all problems with a unique level of intensity. While he understood this was a serious issue on which Council needed to act, Mr. Boyko encouraged Council to act on the side of leniency. Furthermore, he emphasized Mr. German received the message regarding the severity of the issues and would take them seriously. While Mr. German's comments were not legally binding, Mr. Boyko believed Council to take him at his word since he was an ethical individual. Mr. Boyko said Mr. German was deeply concerned with this issue as it was personal to him. Mr. Morehead asked Mr. Boyko if he installed the software system in Caffé Gelato. Mr. Boyko said he did not install the software system and the point of sale component was the only part of the computer he had nothing to do with. Mr. Morehead expressed Mr. German's earlier promise had nothing to do with him personally; however, compliance was an issue of State Law. Even if Mr. Morehead's question had nothing to do with State Law, Mr. Boyko reiterated his belief to the effect Mr. German would keep his word.

Greg Shelnutt, 18 N. Wynwood Drive, said his daughter Emily worked at Caffé Gelato. Due to this fact, the issue was very personal for him. He spoke to Mr. German in order to find out what measures he was taking to fix the situation. Mr. Shelnutt believed Mr. German was very contrite and incredibly sorry for the three incidents that occurred. He expressed appreciation for Council regarding what he believed to be genuine concern for Mr. German. While it may be difficult to believe Mr. German took the issue seriously since he received three strikes, he reiterated the sincerity and contriteness conveyed in their conversations. Mr. Shelnutt believed the measures Mr. German put in place would be helpful; furthermore, he stated Mr. German would keep his promise and make sure the issue did not happen again. He described Mr. German as a pillar in the community and informed the audience he frequented

Caffé Gelato from the time he was a student at the University to the present. Mr. Shelnutt enjoyed utilizing Caffé Gelato's catering when he had parties at his house from time to time. He said Mr. German was a good manager because his daughter relayed he took concerns seriously and wanted the best for his staff.

Carl German said he did not have any prepared comments and announced Ryan German was his son. Mr. C. German informed Council the issue was very hard on both his son and the entire family. Mr. C. German requested leniency from Council and stated his son [Mr. R. German] was a good, hard worker who loves his family, country, and the community of Newark. He believed the family needed to get their lives back; moreover, he had faith in Mr. R. German to fix the issue. Mr. C. German expressed he would not support his son if he observed a devil-may-care attitude. He assured Council this was not the case as Mr. R. German took the issue seriously and would continue to do so. Mr. C. German restated his love for his son as well as his belief in his word.

Katie Gifford, District 3, said she appreciated Mr. C. German's statements and perspective as a father. She announced that her comments were made from a mother's perspective. Ms. Gifford said Caffé Gelato had an apprentice program for middle school students. When she first looked at the agenda item for this matter, she did not expect to have strong feelings. She read the supporting information from the Planning Department and NPD regarding this item on the City website. After reading the supporting documentation, Ms. Gifford wanted to offer support for their recommendation for suspension. Ms. Gifford thought it was egregious that Mr. German willingly and knowingly employed an individual who had a history of weapons charges; specifically, in light of the gun violence epidemic. She learned about Caffé Gelato's fire code violations (i.e. failure to clear fire exits/emergency exits etc.). Ms. Gifford thought NPD, the Fire Marshal, and City staff seemed to go above and beyond in terms of giving them the benefit of the doubt. While much time was invested for staff training, Ms. Gifford was disappointed because it seemed to have no effect on the behavior. She firmly believed Council should support the suspension as recommended from NPD as a law enforcement agency as well as City staff. Ms. Gifford believed enforcing the recommendation for the 30-day revocation and suspension of the SUP would show support for law enforcement, the Fire Marshal and the business community in Newark.

Ms. Gifford believed the suspension would level the playing field and would respect law-abiding businesses (i.e. Taverna, Iron Hill and Stone Balloon). She expressed other businesses have been able to comply with City standards and Caffé Gelato should be no exception. Ms. Gifford believed it would set a bad precedent if Council displayed favoritism; specifically, if the law was applied more leniently to one business than another. If Council did not support the recommendation from NPD and the Planning Department, Ms. Gifford thought it would demonstrate their inability to crack down or enforce any laws or issues related to SUPs. Ms. Gifford stated Caffé Gelato and Mr. German walked into the meeting knowing they most likely would not receive a suspension until after the holiday season; furthermore, this would allow them to continue with their premiere New Year's party with featured cocktail beverages. If the recommendation for suspension was not enforced by Council, Ms. Gifford thought another Council meeting should remove the responsibility of NPD regarding the assessment of points.

Michael Cox, District 4, thought it was clear Mr. German understood the gravity of the situation. He believed it was clear Council must issue a consequence in order to send a message to other restaurants who served underage people; specifically, that serving underage people is dangerous and unacceptable. Mr. Cox thought it was clear Caffé Gelato would lose their SUP if they received one more strike and would go out of business if this occurred. Mr. Cox requested Council to be lenient with Caffé Gelato so the restaurant could remain in business, serve the community, and keep people employed.

James Creque, 13 Madison Drive, said he lived in Newark for the past five years. He stated he attended a number of Council meetings and was impressed with what he observed tonight. Mr. Creque believed law enforcement strived to hold everyone accountable to the law and City Council attempted to ensure justice was served. He was affected by Mr. German's attempts to become a better father and spend more time with his family. Mr. Creque thought Mr. German received a lot of penalties despite his efforts. He expressed he had not seen anyone punished for being a good father as Mr. German was in the last twenty years. Mr. Creque said he previously was penalized twenty years ago for attempting to be a better father and a family man. He requested Council to show Mr. German as much leniency as possible.

John Morgan, District 1, had several points to make and would do his best to get through them as quickly as possible. First, he wanted to look at the issue as if he were a business consultant hired by Mr. German. Based on the testimony this evening, Dr. Morgan said 8% of Caffé Gelato's revenue was attributed to alcohol sales. The majority of alcohol at the restaurant was attributed to ordering wine or beer at a table with a meal. Dr. Morgan strongly recommended Mr. German to close the bar completely and convert that area to table space. This would decrease the time patrons waited to be seated at a table. Dr. Morgan recommended Mr. German conduct background checks on employees prior to hiring them;

furthermore, he thought it should be advertised as policy as he believed it would deter people with questionable backgrounds from applying to work there.

Dr. Morgan provided his personal opinions regarding Caffé Gelato. While he previously had differences with Mr. German due to parking issues, he strongly believed Caffé Gelato was one of the best restaurants in Newark. Additionally, Dr. Morgan considered if there was evidence that underage drinking or serving alcohol occurred to individuals that were not cooperating underage witnesses (CUWs). So far, Dr. Morgan stated there was no evidence that underage drinking or service to minors occurred [besides the CUWs]. Dr. Morgan was not entirely happy with the point system that was implemented a few years ago. He thought there was too much weight attached to minor things and not enough weight on some of the more serious things. At that time, Dr. Morgan expressed concern regarding a scenario where staff overserved an individual who went out and killed someone [by driving].

Dr. Morgan thought there was a situation like this that occurred at Grotto's Pizza on Main Street; specifically, an individual left Grotto's after being overserved and killed a female University of Delaware alumna in the spring of 2015. Tonight, it occurred to Dr. Morgan that the City should institute an alcohol checkpoint at the exit to Municipal Lot #1. Dr. Morgan believed Grotto's Pizza caused many problems and mentioned the signage which advertised all-day service of big beers. He believed Grotto's promoted day drinking and binge drinking which he thought was irresponsible. Dr. Morgan urged Council to consider what type of establishment would take the place of Caffé Gelato if it went out of business.

Charlie Brown, Hockessin, Delaware, said he had the opportunity to meet several members of Council a few years ago. Mr. Brown had known Mr. German for over ten years, ate at his establishment frequently and enjoyed a few drinks at the bar. He was shocked when Mr. German informed him Caffé Gelato was cited for underage drinking because he never saw anyone underage who dined at the restaurant. When underage individuals came to Caffé Gelato, they usually were there because they were attending dinner with their parents. Mr. Brown stated he was a lawyer by trade who worked with a restaurant group that considered setting up a restaurant outside Newark. The restaurant group frequently praised Caffé Gelato. Mr. Brown stated he was a licensed attorney in Maryland and had attorneys and judges in Easton speak about the quality of Caffé Gelato. He believed the restaurant was a destination as well as a unique business that benefitted Newark. When Mr. German called him to tell him about the underage drinking issue, Mr. Brown said he was not aware of the extenuating circumstances and explanations that Council pointed out. He thought the extenuating circumstances were significant due to the rogue employee that pocketed money. Mr. Brown said this was not an excuse but thought it was a mitigating factor. He announced Mr. German took full responsibility for the issues and did not provide any excuses during their conversation. Mr. Brown noted Mr. German's desire to do better moving forward.

James McGee, District 4, stated he was a professor at the University for 40 years. He first met Mr. German in Florence, Italy, during a study abroad program. Mr. McGee expressed Mr. German developed the idea of Caffé Gelato while on the trip in Italy and used the concept of gelato to provide a very successful business in Newark. He informed the audience he was chair of his department for many years and asked Mr. German if he would be interested in catering. Mr. German came up with a very interesting dinner menu for 40-50 people at Mr. McGee's house. Mr. McGee stated he never had observed Mr. German to be so despondent than he was at the moment. He believed Mr. German realized the severity of the situation and took full responsibility. Mr. McGee announced Mr. German thought he failed and believed he apologized to him for no reason. Mr. German made it clear to Mr. McGee that he had a plan to fix the issues. While underage drinking would always remain an issue in Newark since it was a college town, Mr. McGee said Mr. German had created a long-standing business in the community due to his hard work and dedication. Mr. McGee expressed he taught Constitutional Law for 40 years. He did not believe the suspension would serve any purpose.

Jason Withlow was not a resident of Newark; however, he was an employee at Caffé Gelato as a front-house manager. Mr. Withlow described the situation as embarrassing for himself and Mr. German. He emphasized Caffé Gelato took the issues seriously and did not deny their occurrence. He believed it was inaccurate to claim Mr. German did not care about the issue and reiterated he worked at Caffé Gelato for the past six years. The issue of underage drinking always was a concern of Caffé Gelato; however, Mr. Withlow believed Mr. German took even more care to talk about the issue all the time before each shift. As a manager, Mr. Withlow expressed he reminded staff to check IDs and made sure he properly carded individuals as well. He was surprised when Caffé Gelato received the first violation since they spoke about the requirement to card individuals on a daily basis. As soon as the first failure happened, Mr. German called Mr. Withlow and discussed the path forward. They provided additional training and increased the frequency of conversations related to alcohol and carding at staff meetings. Mr. Withlow thought the issue was under control until the second incident happened. After the second incident, additional measures were implemented, the ID scanner was purchased, and further training was provided to staff.

Mr. Withlow acknowledged Caffé Gelato's failures; however, he reiterated they took steps to prevent future incidents from occurring. He objected to statements which implied a lack of caring on the part of Caffé Gelato's staff and Mr. German. Mr. Withlow informed he was the manager on duty when the third incident occurred and was required to call Mr. German to advise him. He felt this conversation was one of the most difficult conversations he ever had; specifically, since he knew how much Mr. German cared and implemented measures to train staff. He believed Mr. German's proposal regarding the sanctions would affect him. Mr. Withlow did not believe the failures should be attributed to Mr. German as he thought the issues resulted from staff. He reiterated staff took the issue seriously and took measures to make things better. If Caffé Gelato went out of business, staff would lose their jobs.

Sherman Epps, District 1, described Mr. German as a standup guy who he met through a marketing class at the University. Mr. Epps concurred Caffé Gelato was an excellent restaurant. He believed Council and the City branded Caffé Gelato as a restaurant that served alcohol to underage students. He was concerned since the media portrayed Caffé Gelato as a place that served underage individuals and worried how this perception would affect the restaurant's future. Mr. Epps believed Caffé Gelato needed to stay open since it was a staple for the City of Newark; however, he wondered what would occur if the same issues happened at Grottos. He questioned what steps would be taken to address the issues at other institutions.

Jean White, District 1, supported the SUPC's recommendation to suspend the SUP of Caffé Gelato to serve alcoholic beverages for 30 days due to points assessed by the NPD for underage drinking violations at the property located at 90 East Main Street. Ms. White said she had been an acquaintance of Mr. German for many years and looked favorably on him. She described Mr. German as an enterprising and hardworking individual who created a high-quality restaurant on Main Street. Ms. White believed all individuals and businesses needed to be treated the same under the law. Furthermore, she stated favoritism could not be displayed when enforcing the law. For example, when an elected official is picked up for speeding, they should receive a ticket and necessary consequences. If a state official is stopped and charged with a DUI, they should be treated like everyone else. The fact if an individual is a high-ranking official or contributed to many charitable causes should not be a criterion considered when enforcing the law. Ms. White believed Mr. German should not be treated differently from other businesses in this regard. She believed Council's failure to enforce the 30-day suspension or lessen the punishment would make a mockery of the City Code and respective ordinances. Furthermore, Ms. White thought it would send a message to other businesses that served alcohol in Newark that serving alcohol to underage individuals is not to be taken seriously.

Additionally, the message would imply that one business is treated differently than the others. Above all, Ms. White believed lesser punishment would be an affront to NPD's Special Operations Unit who spent their time and energy doing their job to enforce the City's ordinance. Ms. White expressed NPD spent time and energy giving classes and education sessions to restaurant owners and employees. Ms. White thought Council should pass the 30-day suspension and Mr. German should accept the consequences of his restaurant's actions. Ms. White announced Caffé Gelato received eighteen points; moreover, three incidents resulted in failure and occurred over a twelve-month period. She believed Caffé Gelato should remain open during the suspension for 30-days and would be able to serve delicious food without alcohol. Ms. White said the community would support Caffé Gelato and they would not fail.

Ms. Sierer brought the discussion back to the table for additional comments from Council.

Mr. Hamilton expressed there were comments made which indicated the suspension needed to be for 30 days in order to show the seriousness of the violations. He asked Mr. Bilodeau for clarification regarding whether a 30-day suspension was required by the City Code. Mr. Bilodeau read the information from NPD's point system which stated Council could decide the time period. Basically, Mr. Bilodeau expressed Council was not required to enforce a suspension for 30 days. Mr. Bilodeau informed Mr. Hamilton there were two things to consider in this matter: the Ordinance where the SUP is and the provision which discusses the revocation of the SUP. He clarified Council could revoke a SUP for up to a year; however, the decision in this matter would be for a 30-day revocation of Caffé Gelato's SUP. Mr. Bilodeau said a 30-day revocation would be the maximum and informed Council this period was previously disclosed to Mr. German when he met with them in February. Mr. Hamilton thought the maximum time for revocation could be up to 30 days; however, Council was not bound by the 30-day limit and could choose a lesser period. Mr. Bilodeau confirmed this was the case and announced the wording "could" was used as opposed to shall. Ms. Sierer quoted the following, "A mandatory meeting with the Special Operations Unit Supervisor, City Solicitor or representative, and a representative from the Planning Department could result in a recommendation from Council for a 30-day suspension of a Special Use Permit."

Ms. Wallace referred to the City Code which stated the suspension should in no case be longer than a period of one year. Due to this provision, Ms. Wallace said Council's only limitation in this matter was the one year period. She asked staff to clarify the enforcement of any suspension. Ms. Wallace mentioned Mr. German and his legal counsel mentioned closing the bar during the suspension and asked staff how this would be enforced. She wanted to know if NPD felt they would be able to enforce the suspension of Caffé Gelato's bar area. Sgt. D'Elia did not believe NPD would be able to enforce the suspension of the bar area.

Mr. Lawhorn believed the overarching thought revealed there clearly was an issue. He stated there was a systematic failure at Caffé Gelato and believed the most reasonable explanation [for him] for the problem dealt with training and potentially management. Mr. Lawhorn asked Mr. German to clarify his solution for front-end management; specifically, what current management consisted of and what the proposed changes would entail. Mr. German said there were three managers at the moment and believed they needed to add two additional managers to fill a total of 60 hours (working 30 hours each). He expressed it was necessary to make sure all the staff were properly carding customers and believed the additional management presence would assist this need. Mr. German said there would be a manager assigned to check staff's compliance with carding and ensure all customers at the bar had their IDs scanned and checked. Additionally, all customers at the tables needed to have their IDs properly checked. Mr. German stated the data from the software would be reviewed each evening to make sure all IDs were properly checked and hold staff accountable. He reiterated personnel would be specifically assigned to monitor compliance. In addition to traditional front-end management duties, the assigned manager would conduct cash-outs and monitor compliance (i.e. checking server reports to see if data matched up with IDs and the alcoholic beverages that were sold). Mr. German reiterated his desire to remain in business and asked Council not to impose a penalty that was so harsh they would be out of business.

Mr. Lawhorn wondered if it was possible to discuss a penalty that would be less than 30 days; however, Mr. German would be required to follow through with his plan by a certain date. If Mr. German did not follow through with the plan by a certain date, Mr. Lawhorn suggested Council should go back and implement the full 30-day suspension. Mr. Bilodeau reiterated the maximum penalty that could be imposed in this matter was a 30-day suspension; furthermore, he reminded Mr. Lawhorn this was the discussion at the meeting with Mr. German in February. He expressed Council could consider any time less than a 30-day suspension (i.e. ten-day suspension with conditions). Mr. Bilodeau said the conditions all had to do with the sale of alcohol, management and systems that were in place. He announced Council could decide on a suspension for a period of less than 30-days and it would be allowable. Mr. Lawhorn believed there needed to be a penalty and a message should be sent to other establishments. He wished Mr. German would have taken the measures he recently implemented after his second violation as opposed to the third. Ultimately, Mr. Lawhorn thought the punishment should send the message to other businesses that the issue needed to be corrected. He did not believe Caffé Gelato was a problem restaurant and thought there were certain extenuating circumstances; however, the most important issue was ensuring Caffé Gelato solved the problem.

Mr. Lawhorn was willing to show leniency if Mr. German followed through with his plan by a specific date. If Mr. German did not implement his plan by the specific time, he would be required to serve the full 30-day suspension. Mr. Lawhorn was not opposed to a ten-day penalty with the provision Mr. German hired two front-end managers – who both worked 30 hours per week – by a specific date such as February 15, 2019 and implemented his proposed program. He thought the suspension could be for ten or fifteen days as long as Mr. German completed what he promised. Mr. Bilodeau confirmed this could be done and expressed similar measures were used in Alderman's Court. Moreover, the punishment could be 30-days revocation. However, twenty days would be suspended, and ten days would be served. Mr. Bilodeau stated the condition of ten days would be contingent on whether Mr. German completed his plan or other measures determined by Council. If Mr. German did not fulfill the requirements, he would be required to serve the remainder of the suspension for twenty days. Mr. Lawhorn agreed with Mr. Bilodeau's suggestion and reiterated he wanted Caffé Gelato's problem to be fixed. He reiterated his belief Caffé Gelato still needed some level of punishment needed to be enacted which would not put Mr. German out of business. However, Mr. German would be required to implement his plan and measures determined by Council to ensure his success. These measures would buy Mr. German leniency. If he did not comply, Mr. Lawhorn said Mr. German would receive the full penalty.

Mr. Clifton expressed the evening was very touching and emotional. He believed the problem at hand had nothing to do with the SUP process. Mr. Clifton announced he heard Mr. German received the message. He echoed Mr. Morehead's statement to the effect Mr. German should have moved heaven and earth to fix the problem after the first violation. Mr. Clifton thought Mr. German did not care enough after the first incident and operated in the context he believed he was above the law. If Mr. German did not get the message the first time, he should have at least received the message by the second time. Mr.



Clifton was in disbelief due to the fact Mr. German met with NPD and the Solicitor and still did not fix the problem. He believed Mr. German said he received the message now since one more violation would require the State to take over.

Mr. Clifton thanked Mr. German for his concern; however, he agreed with Mses. Gifford and White to the effect he would have a hard time going against the recommendation from NPD. Mr. Clifton emphasized NPD understood the issue and cared for the community in Newark; specifically, NPD thoroughly understood the issues and serious nature of underage drinking. He articulated NPD pulled dead bodies out of cars due to alcohol. Mr. Clifton described the evening's sentiments as a kumbaya moment to the effect people reiterated Mr. German was a nice guy. While Mr. German was a nice guy and had great food, Mr. Clifton emphasized the issue at hand was not related to those facts. Mr. Clifton adamantly stated the issue in this matter related to the rule of law; specifically, setting the standards that all other restaurants had to follow. If the issue occurred at Grotto's Pizza, Mr. Clifton believed there would not be the same level of support from the community as was the case with Caffé Gelato. He thought sentiments for Grotto's Pizza would request for the establishment to be shut down. Mr. Clifton said this was not the case for Caffé Gelato and believed Mr. German got a pass on issues where other restaurants would not be given the same luxury. He believed Council was in the process of playing a game to the effect of making a deal. Mr. Clifton announced he would not make a deal and thought the suspension should be 30-days starting tomorrow, December 11<sup>th</sup>, 2018. Caffé Gelato could still serve food at this time; however, they would not be permitted to serve alcohol during the suspension. Mr. Clifton thought Caffé Gelato's revenue from alcohol was so small that he did not believe the suspension would be impactful. As a member of Council, Mr. Clifton did not want to make a decision that was contrary to the City Code regarding underage drinking. He reiterated NPD and other agencies worked hard to keep the community safe; therefore, any suspension less than the recommended amount was unacceptable.

Mr. Markham said a key component related to land use was the ability to do a variety of things with the applicant. This ability provided a certain degree of flexibility for Council. Mr. Markham said he would throw out some modifications to the suspension. If Mr. German agreed to Mr. Markham's modifications, he would make a proposal. Mr. Markham suggested a period of 30 business days for the suspension which would begin on January 2, 2019. For this period of suspension, the bar area would be closed to patrons. In order to be served alcohol, patrons would be required to sit at tables and order food. Mr. Markham clarified all bar stools and seats needed to be removed. Mr. German said he agreed to these terms. Ms. Sierer asked Mr. Markham to repeat his recommendation. Mr. Markham restated his recommendation was for a period of 30 business days, beginning on January 2, 2019, the bar area would be closed to patrons. In order to be served alcohol, patrons would be required to sit at tables and order food. Mr. Markham clarified all bar stools and seats needed to be removed. He told Mr. German prominent signage should be displayed to inform patrons the bar area was closed. Mr. German confirmed he would do this. Mr. Markham expressed the period of 30 business days would start January 2, 2019 and the restaurant would not serve alcohol later than 10:00 p.m. Mr. German agreed to these terms. Mr. Markham asked Mr. German if he would agree to implement scanner technology as opposed to only entering a patron's date of birth. Mr. German agreed to this request. Mr. Markham said all point of sale areas would require a patron's date of birth and license to be scanned in order to serve alcohol. Mr. German expressed his agreement to this request.

Mr. Markham agreed with Mr. German's proposals for staff training; however, he required all training records needed to be submitted to the Planning Director and SUPC monthly. All new hires would be required to complete training before they could serve. Mr. Markham thought his recommendation incorporated the 30-day penalty as well as items which Mr. German told Council he would accomplish. Mr. German said he would ensure he complied with all terms of Mr. Markham's suggestion as he set forth. Mr. Markham articulated this was his proposal and would leave it up to the other members of Council.

Ms. Wallace was unsure if it was necessary to include all of the conditions as proposed by Mr. Markham. She thought the conditions should be up to Mr. German to determine to decide what he would undertake to make sure the issue did not happen again. If the issue occurred again, Ms. Wallace announced, "that would be it." She agreed with the 30-day suspension beginning on January 2, 2019; however, she mentioned the inconvenience to staff at the restaurant who depended on money to pay their bills. Ms. Wallace stated she was willing to be lenient by allowing the suspension to begin on January 2, 2019. However, she was not willing to be lenient by separating bar service and table service. She thought Sgt. D'Elia stated NPD would not be able to enforce service if the bar and table area were separated. Ms. Wallace thought the 30-day suspension should start on January 2, 2019 and should prohibit alcohol sales throughout the entire restaurant during this period. She reiterated her belief that Mr. German should develop his own conditions and they should not be stipulated by Council. Ms. Wallace said if Mr. German was not effective, he would be unable to sell alcohol in the State of Delaware.

Mr. Hamilton thanked Mr. Markham for including the training component for new employees in his recommendation. He expressed he had been involved in industries where he had to deal with compliance; furthermore, one of the difficulties with hiring new people was the wait required for training classes that would be a month or two out from the date they were hired. Mr. Hamilton reminded Mr. German he would be required to ensure his plan included ample time for training new staff in advance. He thought it was critical for all staff to go through training classes and suggested Mr. German create records staff would sign to document attendance at training. Mr. Hamilton thought the fact NPD said Mr. German's proposal was unenforceable created a challenge which he believed was difficult. He was not opposed to the 30-day suspension; however, he emphasized it was necessary to be enforceable. Mr. Hamilton agreed with Ms. Wallace's proposal which recommended the 30-day suspension of all alcohol at Caffé Gelato and would begin on January 2, 2019. He also thought Messrs. Lawhorn and Bilodeau's idea for lesser or suspended suspension was a possibility (i.e. 15 days or 30 days with twenty days suspended and ten required to be served). Ms. Sierer reminded Council she believed they were not permitted to suspend Caffé Gelato for a period greater than 30 days. Mr. Bilodeau said Caffé Gelato could be suspended for 30 days from serving alcohol; moreover, Mr. German would be allowed to resume alcohol service at an agreed-upon date. If Mr. German completed x, y and z, [and complied] he would not be required to serve the remainder of his suspension. Mr. Bilodeau reiterated any violation of the conditions would require Mr. German to serve the full 30-day suspension.

Mr. Markham questioned if the bar area closure would be inspected through the Building Department as opposed to NPD. Ms. Gray stated she did not contemplate this issue before and agreed it was a zoning issue. She believed the Planning Department would encounter the same challenges with enforcement that Sgt. D'Elia previously mentioned.

Mr. Morehead agreed with Ms. Wallace's recommendation to the effect staff made a recommendation to Council that was important for a number of reasons. He believed some leniency was appropriate; specifically, he was convinced the suspension could be delayed till January 2, 2019. Mr. Morehead emphasized he strongly supported a 30-day suspension as recommended.

Ms. Sierer said the evening had been difficult and disheartening; however, she stated it was necessary to play by the rules. She was willing to compromise a little bit and expressed it would not be fair to the other 48 restaurants and businesses on Main Street who played by the rules if Mr. German was not given the recommended suspension. Ms. Sierer acknowledged Mr. German had been a great member of the community; however, he was required to play by the rules like everyone else. She emphasized it was necessary for Council to be supportive of NPD and staff. Ms. Sierer agreed with Ms. Wallace's statement to the effect compromises and conditions were Mr. German's responsibility and was not the responsibility of Council. She emphasized Mr. German needed to take every measure to ensure compliance with City Code. Ms. Sierer believed simple was better and supported the recommendation from staff for a 30-day suspension. She announced her willingness to compromise by allowing the suspension to begin on January 2, 2019 since December was an important month for Mr. German, residents of the Newark Community and visitors.

Ms. Sierer asked Mr. Markham if he wished to provide additional comments on the issue since Caffé Gelato was in his district. Since Mr. Markham said he did not have additional comments, Ms. Sierer asked Ms. Wallace for a motion. Mr. German asked Ms. Wallace if he could provide an additional comment and she agreed. Mr. German reiterated his belief that the 30-day suspension had the potential to put him out of business and desired for a chance to fix the problem. Due to this fact, Mr. German requested a lesser suspension and expressed he was not taking anything for granted. He restated his desire to stay in business and acknowledged it was necessary for him to complete all the required steps and measures to ensure compliance. Mr. German accepted full responsibility for his failures and restated his desire to remain in business.

MOTION BY MS. WALLACE, SECONDED BY MR. CLIFTON: THAT COUNCIL SUSPEND CAFFÉ GELATO'S SPECIAL USE PERMIT TO SELL ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES PER SECTION 32-56.4 OF THE CITY CODE FOR A PERIOD OF 30 DAYS, BEGINNING ON JANUARY 2, 2019. THIS IS BASED ON THE PLANNING STAFF'S MEMO DATED DECEMBER 3, 2018 AND THE TESTIMONY AND THE COMMENTS PRESENTED HERE TONIGHT.

Ms. Sierer reminded Council they were required to vote individually since the issue at hand related to a SUP. She told Council to state their reasons why they did or did not support the motion. Mr. Bilodeau reminded Council to refer to Section 32-78 of the City Code in reference to SUPs:

1. Does Caffé Gelato adversely affect the health or safety of the public;
2. Is Caffé Gelato injurious to the public welfare, and

3. Is Caffé Gelato in conflict with the purposes the Comprehensive Plan.

Ms. Wallace stated she would vote in favor of the motion for the following reasons:

1. She believed Caffé Gelato's incidents adversely affected the health or safety of persons residing in the City of Newark boundaries or within one-mile of the City of Newark boundaries (and the State of Delaware);
2. She believed there was detriment to the public welfare and injurious to property within the City of Newark Boundaries or within one-mile of the City of Newark boundaries (and the State of Delaware), &
3. She believed Caffé Gelato was in conflict with the purposes of the Comprehensive Development Plan of the City of Newark.

Mr. Hamilton announced he would be voting in favor of the motion for the reasons stated by Ms. Wallace.

Mr. Morehead said he would be supporting the motion as he believed the safety and wellbeing of residents in the City of Newark were adversely affected. He believed Caffé Gelato's conduct was detrimental to the public welfare; moreover, he believed it was in conflict with the purposes of the City's Comprehensive Development Plan.

Mr. Markham announced he would not support the motion because he disagreed with the previous comments from Ms. Wallace and Messrs. Hamilton and Morehead.

Mr. Clifton announced he would not support the motion for the reasons stated by Mr. Markham.

Mr. Lawhorn stated he would not be supporting the motion; however, he did support some of the reasons stated by Ms. Wallace. Furthermore, Mr. Lawhorn did not believe the punishment was in line with the best possible outcome.

Ms. Sierer said she would support the motion for reasons previously stated by Ms. Wallace.

MOTION PASSED. VOTE: 4 to 3.

Aye – Hamilton, Morehead, Sierer, Wallace.

Nay – Clifton, Lawhorn, Markham.

*(Secretary's Note: Due to the length of the meeting, Council did not discuss agenda items 11-A-1 and ES-C. These items will be rescheduled for the January 14, 2019 Council meeting.)*

**24. 11. ITEMS SUBMITTED FOR PUBLISHED AGENDA:**

**A. Council Members:**

1. Discussion and Request for Direction to Staff on Potential Special Meetings Regarding Student Housing and Setting Priorities for City Staff – Councilman Lawhorn

**25. 11-B. OTHERS: None**

**26. MOTION TO ENTER EXECUTIVE SESSION**

**ES-C.** Executive Session pursuant to 29 Del. C. §10004 (b) (6) and (9) for the purposes of discussion of the content of documents, excluded from the definition of "public record" in § 10002 of this title where such discussion may disclose the contents of such documents and discussing personnel matters in which the names, competency and abilities of individual employees are discussed.

**RETURN TO PUBLIC SESSION**

**27. Meeting adjourned at 1:20 a.m. (December 11, 2018)**

Renee K. Bensley, CMC  
Director of Legislative Services  
City Secretary

/wcp